



**Airport  
Business  
Solutions**

**Airport Business Solutions**

*"Valuation and Consulting Services to the Aviation Industry"*

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February 9, 2007

Mr. Mark K. Anderson  
Heber City Manager  
75 North Main Street  
Heber City, Utah 84032

RE: Airport Lease Analysis  
Heber City Municipal Airport - Russ McDonald Field  
Heber City, Utah

Dear Mr. Anderson:

Per the request by Heber City, we are pleased to present this document, which represents an Airport Lease Analysis for the Heber City Municipal Airport - Russ McDonald Field in Heber City, Utah. The following report provides our assessment and analysis of various and potential lease issues and policies for ground leases at the Airport, as well as our recommendations for consideration.

In the development of this document, *Airport Business Solutions* researched many sectors of the local, regional and national airport market, expanding as necessary to gain sufficient and comprehensive data to yield adequate and supportable conclusions. Moreover, we reviewed the hangar row agreements, hangar leases, and the FBO lease and hangar agreements. We met with the tenants and the FBO owner/manager and interviewed City Officials and Airport Staff. In addition, *ABS* has provided Heber City with a sample RFP document and a sample lease agreement.

We appreciate the opportunity to provide our professional services to Heber City. If you should have any further questions, please advise.

Sincerely,

Randy D. Bisgard  
Senior Vice President

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*Office Locations: Tampa, FL \* Fort Myers, FL \* Denver, CO \* Boston, MA \* Jacksonville, FL*

## ***SECTION I***

### ***INTRODUCTION***



The Heber City Municipal Airport - Russ McDonald Field (FAA Identifier 36U) is a small to mid size general aviation service facility located in the Heber Valley area of Utah. The Airport serves a number of rural and mountain communities between Park City to the north and the community of Charleston to the South. The facility currently does not offer any commercial passenger services; however, there is abundant commercial service at Salt Lake City International Airport (SLC), which lies 31 miles northwest of Heber. Competitive general aviation services are found at Provo Municipal Airport (PVU), which is 21 miles to the southwest. The Heber City Airport serves based and itinerant general aviation traffic, including corporate and business related travel, and has one full service Fixed Base Operator (FBO), OK3 Air, that provides a wide range of services, including the sale of both 100LL/Avgas and Jet-A fuel. Other services include minor airframe and power plant repairs, aircraft sales, flight training, aircraft rental, and limited aircraft charter.

The Airport has experienced minimal growth in recent years, and current aircraft activity is approximately 38,000 operations (take-offs and landings) annually. The aircraft activity at the Airport is a mix of local based aircraft operations, which makes up over 57 % of the activity, transient aviation including single engine aircraft, cabin class twins, and some jet aircraft, which comprises approximately 40% of the activity, with the remainder being limited air taxi and military activity. There are occasional spikes in activity for local special events such as air shows and the Sundance Film Festival, which is an annual event that brings in additional corporate jet activity. The Federal Aviation Administration (FAA) estimates that the average based aircraft population on the field is approximately 100 aircraft, of which approximately 75 are single engine aircraft, 4 are multi engine, 3 are jet aircraft, 3 helicopters and the remainder are gliders and ultralights.

Although the Heber facility is in close proximity to the ski resort area of Park City, much of the corporate aircraft activity associated with the ski resort utilizes the extensive FBO facilities and airport infrastructure found at Salt Lake City International Airport (SLC). The SLC advantage includes longer runways, better quality FBO facilities, additional heated hangar facilities, better all-weather instrument landing approaches, and easy automobile access via Interstate-80. However, it should be noted that the area surrounding Heber City is continually being encroached by resort properties and business development related to the ski areas to the north and west. As such, property values and activity levels are increasing at a significantly higher rate than the national average. Although not immediate, this development will progressively attract additional transient and based aircraft activity to the Airport within the next five to ten

year period. This situation will, over time, create significantly higher demand for runway facilities, taxiway access, aircraft parking areas, hangar capacity and other related general aviation services particularly for jet and turboprop class aircraft. It is within this growth context that this review has been developed.



The purpose of this report is to conduct a leasing policy analysis to review the current lease strategies in place, and to receive input from the City and its aviation tenants regarding improving the financial position of the Airport, while protecting the rights and activities of the users and tenants of the field. *Airport Business Solutions (ABS)* has provided recommendations to Heber City in accordance with all applicable local, State and Federal laws, regulations, and ordinances, and has provided this recommendation based upon our research and analysis for the most reasonable and non-discriminatory resolution to these issues.

### **BACKGROUND**

The Airport has a number of hangar lease scenarios which have evolved over the past several years, including a mixture of leases that include some with reversionary clauses and some without. In some instances hangars are owned outright by aircraft operators, and there are some that are direct leases from the Authority or FBO. At a public meeting in November 2006, *Airport Business Solutions* and the Heber City City Manager received comments/questions regarding the Airport pursuant to lease issues and future development. Specifically, the following tasks have been requested by the City:

1. Conduct meetings with the various hangar tenants to understand concerns and receive input.
2. Meet with FBO management and evaluate the existing FBO Lease/Hangar Agreement.
3. Evaluate Hangar Row Agreements and make recommendations for amendment.
4. Evaluate other Hangar Agreements and make recommendations for modifications where appropriate.
5. Make recommendations regarding considerations for an RFP for future hangar development.

### ***WHAT IS REVERSION?***

For the purpose of this document, it is important to define what reversion means for hangar leases. Reversion generally means that at the termination of a lease, or potentially at a specified point during the term of a lease agreement, that ownership of the improvements reverts to the Lessor. In this case, the Lessor refers to Heber City, who is the owner/sponsor of the Heber City Municipal Airport - Russ McDonald Field. Essentially, it is the point at which the Airport can begin leasing land and improvements of a leasehold at their prevailing market rent, as opposed to just receiving ground rent. However, reversion can also take other forms. In some instances, reversion can mean that at the termination of a lease, the Lessor can require that the tenant who built the improvements remove them and bring the site back to its original unimproved state.

This presence of a reversionary clause is typical within the aviation industry for a number of reasons. These include the provision for future revenue streams, maintaining a certain level of control over the development and maintenance of facilities on the airport, and the ultimate control/management over airport development as it may impact future airport expansion. However, it should be noted that there are numerous other alternatives in place at airports throughout the United States, to include provisions for the airport to purchase the improvements at lease termination. Seldom is there a provision for automatic or perpetual renewals of the lease at the prevailing ground rent only.

### ***LEASE ISSUES & CONSIDERATIONS***

In approaching this complicated topic, *ABS* had to consider multiple considerations and options. The following include some primary considerations.

- ◆ Whatever the City finally adopts as their Airport's lease policy, it must be consistently applied to all existing and prospective tenants, and should be adopted by a Leasing Policy Ordinance to codify its approach.
- ◆ The City must understand and address the condition of the buildings that it could take over in the next few years, and should complete a detailed building inspection for planning purposes. (i.e., What is the City willing to absorb in annual maintenance for reverted or owned structures?)
- ◆ The potential growth and expansion possibilities on the Airport indicate that the private sector may be willing and able to invest in Airport hangar development.

- ◆ The City must consider and understand the possible impact that changes to both reversionary and non-reversionary leases.
- ◆ What are the legal ramifications regarding the City's financial responsibilities to the community regarding the self sufficiency of the Airport?
- ◆ The City has a fiduciary responsibility prohibiting the giving of money, property, or credit to any private entity. Based upon this concept, should the City only issue new leases on existing Airport leaseholds only if the tenant is willing to make reasonable reinvestment in their property?
- ◆ Does the City believe that there is interest from prospective tenants in the leaseholds upon reversion?
- ◆ How does the City ensure that there is no discrimination between tenants with and without reversionary provisions?
- ◆ Any adopted policy going forward must be in compliance with the Airport's Sponsor Assurances, also known as Grant Assurances, as stated in FAA Order 5190.6. This must be done in order to maintain an eligible status for future Federal grants, which are critical to the Airport's operations and maintenance.
- ◆ Do the current structures and their locations meet current and future Airport development needs?
- ◆ Without reversions how will the City manage property acquisitions needed for Airport development?
- ◆ The City has an obligation to make the Airport as self-sustaining as possible. Does the current land use represent the highest and best, and most financially beneficial use for the leasehold property?

It should be noted that *ABS* was provided copies/samples of individual hangar agreements. *ABS* is aware that lease language varies in the older leases, and to a great extent, this is what has led to the current policy situation. In a recent lease agreement reviewed by *ABS*, the term reflects a twenty-year term, as long as the tenant is not in default.

## **AIRPORT DEVELOPMENT**

In information gathered from the public meetings, many tenants expressed concerns regarding the potential for runway/taxiway development that may displace hangars or leaseholds. (It is important to note that the Airport shares those concerns and want to plan for future development that meets the needs of future business while taking care of its existing core tenants and revenue streams.) As the Airport Sponsor, it is the responsibility, and right of the City, at its discretion and as designated by the City Manager, may from time to time need to change the infrastructure, runway access, taxiway clearance and navigational aids to meet the

needs of all users. In addition, the Airport or City is also responsible to meet the changing requirements of the FAA with regards to clear zones, runway protection areas and other safety concerns as needed. These two demands, from users and FAA must be kept in balance not only for legal reasons, but also for economic reasons as well as to continue to be eligible for Federal or State monetary grants.

### **PROJECT ACTIVITIES AND PROCESS**

As part of the scope of this project, *ABS* met and talked with the City Manager, FBO management, Airport personnel, and Airport tenants during the research and discovery phase of this effort. Comments and written materials (sample leases) were collected from Airport tenants and carefully reviewed and considered. In addition, *ABS* staff reviewed several comparable airports for details on their respective approach to lease conditions. Comments received during the tenant meeting are included within this report in Section II.

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## SECTION II

### TENANT MEETINGS AND CONTACTS

Both the City and *Airport Business Solutions* believed that communications with the Airport tenants is a very important part of this process. In order to arrange for unrestricted access to the project process, *ABS* provided multiple avenues for the tenants to access our staff in order to provide comments and input into the research process. This included:

- On-site open tenant meetings
- Private meeting with FBO management
- Full access to e-mail
- Toll free telephones

The tenant meetings were held over a four-hour period during evening hours on November 15, 2006. A number of different tenants attended the meetings, including all 14 of the hangar row occupants and the 7 member Airport Advisory Board. Several of the other box hangar tenants were also present, and all attending provided comments and presented concerns. The meetings were divided into separate sessions, including one for the hangar row tenants, and a second session for the box hangar tenants.

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After brief opening remarks by Mark Anderson and a presentation by Michael Hodges regarding our project tasks and fact finding mission, the floor was opened up for questions and comments. The following notes were taken regarding the tenant comments:

#### Hangar Row Tenant Meeting (Reversionary Leases)

The first comment was regarding the uncertainty of what happens to lease issues with a new administration. Tenants want a better definition of what takes place at termination of leases.

2. How is the value of a hangar determined upon decision to move hangar row?

3. What is the value of the hangar improvements vs: the base hangar?

4. Will the City value each hangar individually?

5. It is common to have two different kinds of leases on an airport?

6. Wouldn't it be better to have only one kind of lease on the Airport?

7. Relocation of hangars "may be the wrong term". Under the Federal Relocation Act, will there be a buy-out of hangars with a first right of refusal on new hangars at new location?
8. We have been through this before and nothing happens. Why are we looking at taking down hangar row?
9. When does the first hangar lease come to an end?
10. Are we (ABS) looking at the Master Plan?
11. Any change in leases today would only mean more money to the City?
12. Non-reversionary leases are not that common. Are there any that have converted?
13. Would you (ABS) advise the City to stay with current plan or change reversionary status?
14. Why aren't leases that change hands changing dollar amounts and terms?
15. Airport expectation is that facilities will expand. Is this review preparing City for this scenario?
16. Would a new scenario be forced on all tenants or negotiated individually?
17. Can the City raise the \$50 fee "contract"?
18. What about a single developer for new hangars - "rent controls"?
19. Hangars are decreasing in value. How do we change this scenario? Formula for buy-out of hangars?

#### **Box Hangar Tenant Meeting (Non-Reversionary Leases)**

1. In essence, their leases are reversionary. 5 - years there is opportunity to take hangar buildings off site. "Quasi-Reversionary" - Leases need better termination terminology here.
2. Address a way to renew leases.
3. Challenge structure, buy-in of every hangar owner - quality of upkeep an issue.
4. Declining value asset if no opportunity for renewal - assuming hangar is in good condition.



5. Need more clarity for renewal language for "lenders".
6. Need a mechanism to exchange money/investment for longer term.
7. Length of term beyond 20 years.
8. What protection does the City need and what protection does the tenant need?
9. City needs fair compensation with options in case of re-developments
10. Tenants need quiet enjoyment.
11. Need leases commensurate with investment - longer term for more dollars invested.
12. Leases need a maintenance standards clause.
13. What about new improvements needed at the airport? Taxi-lanes for new hangars, access gates, RFP for new developer?

Comments and responses to these questions and/or statements will be provided in Section IV, Conclusions and Recommendations

## **SECTION III**

### **LEASE/REVERSION RESEARCH**

The following pages will present the results of multiple interviews and comments from the FAA and other airport management and/or sponsors. It is important to remember, and this will become obvious as you review the following lease language, that airports are different and develop differently. As such, the same terms and conditions are not necessarily practical for every airport.

#### **FAA Airport District Office, Oregon/Idaho Section (SEA-640)**

This office advised ABS that the FAA does not track airports with reversion clauses. They recommend reversion clauses to make it clear to the tenant what occurs at the end of a lease. It is their opinion that if the lease is silent on the issue, improvements automatically revert to the airport at lease termination, since tenants cannot own public land. Problems tend to occur because tenants often fail to consider what occurs at the end of the lease term.

#### **FAA Safety and Standards Branch, Southwest Region (ASW-620)**

ABS believed that the FAA Southwest Region could provide insight because they are currently involved with a reversion situation at the White Sands Regional Airport in Alamogordo, New Mexico. This office echoed the SEA-640 FAA office by stating that the FAA does not have a set policy on reversion clauses. They also indicated that it is a good business practice to include a reversion clause, and that problems occur when the clause is included in a lease, but not enforced.

At Alamogordo, the FAA had to pressure the City to charge market rates for the "improved land". During a review of leases at the Airport, it was revealed that the City had renounced or removed its claim to building improvements on 19 of 27 ground leases on leased Airport land. This was a conflict with the "reversion terms" of the leases. In 2002, the Airport inserted new language to the leases that stated that the City shall not assert any claim to improvements, pre-existing or not. This was done at the request of the leaseholders at the Airport. Now, the Airport is in jeopardy of losing its Federal and State funding, since it is not in compliance with the Grant Assurances.

In a letter to the City from the New Mexico Department of Transportation, it was pointed out that the normal State-wide procedure is to rent bare land at a subsidized rate, with any improvements reverting to the airport after the lease term has expired. These facilities are then owned by the airport, who then rents the land and improvements at a rate of 10 to 20 times greater than the bare ground rental rate. This allows the airport to become a self-sustaining entity, thereby lessening the burden on the local taxpayer. The State also advised that some of the leases they reviewed were giving away the sponsor's property interest, which was a violation of the New Mexico law under the "anti-donation" clause.

Here are some of the situations/cases that have occurred at the Airport, according to an article from the Alamogordo News.

In 1994, Hangar O was sold to Ed Pavelka for \$10.00, according to City records. In November of that year, the Airport Advisory Board took up the matter as a potential violation of the advance notice requirement in the lease. Three years later, Hangar O was sold again, this time to Tina Cesa, for \$36,000. In 1998, the City amended the lease with Cesa to state that Alamogordo has the right to purchase the property at its undepreciated value when the lease expires.

In the case of Hangar G, it was first leased by Black Hills Aviation in 1975. In 1991, the lease rate was increased from \$0.04 to \$0.08 per square foot when the lease was up for renewal. The City received no notice of Black Hills' intentions until Jan. 27, 1992, 13 months after the lease expired. The City then renewed the lease after waiving "any irregularities in the extension of the term of the airport lease agreement," and set the lease rate at \$0.04 per square foot. Two years later, Black Hills sold the assets to Neptune Aviation, with the reversion clause still in effect. In 2002, the City agreed to eliminate the reversion clause in Neptune's lease. It was noted in an September 19 internal memo that Neptune had been in default of its lease at least twice.

One lessee was improperly using City property to secure a loan. The FAA advised the City that a tenant's hangar construction loan involved a mortgage on the building and the land it sits on. The City owns the land, not the tenant.

On the other side of the issue, the Mayor of Alamogordo wrote a letter to the FAA in July 2005 arguing that the reversion clauses could lead to increased City spending. He stated that assuming that the City takes possession of the improvements may not take into consideration the economic burden that the City would be assuming. In addition to the Mayor, several tenants do not like the reversion clause, since many have sold their interest to third parties for substantial financial gains.

### **Port of Portland**

Diane Trudo, Contract Administrator III  
Aviation Business and Properties

Ms. Trudo advised that the Port of Portland has standard reversion language for both the Hillsboro and Troutdale Airports. The sample ground lease for Hillsboro included a very typical reversion clause, as follows.

#### *Title to Improvements upon Termination*

*All Improvements (whether constructed by Lessee or the Port) located on the Premises at the expiration of the Initial Term or earlier termination of this Lease, shall become the property of the Port. Notwithstanding the foregoing, the Port reserves the right to require Lessee to remove any*

*Improvements that have not been adequately and reasonably maintained by Lessee, from the Premises upon termination of this Lease. Such Improvements shall be removed within the time frame set forth in Section 10.5. The Port will give Lessee notice of such unmaintained Improvements it will require Lessee to remove at least ninety (90) days in advance of the Expiration Date. The Port reserves the right to require removal of Improvements on shorter notice if Lessee has allowed their condition to deteriorate during the last ninety (90) days of this Lease.*

## **Eugene Airport**

Carrie Martin, City of Eugene Public Works - Airport Division

Eugene Airport has a policy that addresses reversion, which is entitled "Policy for Non-Commercial Hangar Site Leases." This policy is very similar to its Commercial Policy. Within the policy, it states the following:

*Termination - Removal of Improvements prior to expiration of an existing lease, Lessee may submit a written request to negotiate a new lease. Removal of improvements will not be required if a new lease is negotiated. If a new lease fails to be negotiated, or if the required notice is not received from the Lessee, then the Airport Manager will require the removal of the hangar and improvements and restoration of the premises at the Lessee's expense in accordance with the provisions of the lease, unless other arrangements satisfactory to the Airport Manager are made for the disposition of the hangar and improvements, whether sale, removal, or otherwise. For leases that contain automatic transfer of ownership clauses, the Airport will work with the Lessee during a reasonable period of time, not to exceed six (6) months, to retain title in the Lessee's name until a new lease is negotiated or arrangements satisfactory to the Airport Manager are made for the disposition of the hangar and improvements, whether sale, removal, or otherwise. If, after the six (6) month period of time, Lessee fails to negotiate a new lease or dispose of the hangar and improvements, then the hangar and improvements will be deemed abandoned by the Lessee.*

*The Airport will not require automatic reversion of hangar facilities upon expiration of the term of the lease. However, the airport retains the right to withhold a new lease if the Airport Manager determines that the property needs to be used for other purposes, such as airport development, or if the hangar owner fails to maintain and renovate the hangar to comply with the minimum standards for non-commercial hangars in effect at the time.*

**City of Redmond, Oregon**  
Linda Pepin

The City of Redmond has a standard reversion clause for their hangar leases. Ms. Pepin sent the following standard language.

*Ownership of Improvements.*

*Title to all improvements, including the Hangar, to be constructed on the Premises by Lessee shall be owned by Lessee until expiration of thirty (30) years from the commencement date of this Lease or earlier termination of this Lease. All improvements, including the Hangar, on the Premises at the expiration of the term or earlier termination of this Lease shall, without compensation to Lessee, then automatically and without any act of Lessee or any third party become City's property. Lessee shall surrender the improvements to City at the expiration of the term or earlier termination of this Lease, free and clear of all liens and encumbrances, other than those, if any, permitted under this Lease or otherwise created or consented to by City. Lessee agrees to execute, acknowledge, and deliver to City any instrument requested by City as necessary in City's opinion to perfect City's right, title, and interest to the improvements and the Premises*

**Redmond Airport**  
Mr. Carter

He advised ABS that if the property reverts, then they usually lease it back to tenant. Moreover, new airport agreements contain language that gives the tenant the first right of refusal.

*Termination*

*Upon termination of the agreement, Tenant shall surrender the leased premises in good condition. Buildings constructed by the Tenant with permission from the Lessor shall not be removed. Depreciation and wear from ordinary use of the purpose for which the Tenant is responsible shall be completed prior to surrender of the lease premises.*

*Upon termination of the agreement, the building and all improvements which are a part of the lease shall become the exclusive property of the Lessor.*

*Upon termination of the agreement, Tenant shall have the right of first opportunity to lease the property and improvements from the Lessor for five (5) years and renewable every five years, thereafter with annual rent equal to ten percent of fair market value of land and improvements. Same conditions for adjustments as set out in Section 3.*

**Oregon Department of Aviation - Aurora State Airport**  
Jennifer Anderson

The following lease language was provided by Ms. Anderson.

*Surrender at Expiration - Upon expiration of the term of this Lease or earlier termination on account of default, Lessee shall surrender the Premises in good condition.*

*Lessee's Improvements - Before expiration or other termination of the Lease term, LESSEE shall remove all furnishings, furniture, and trade fixtures that remain its property. If LESSEE fails to do so, this failure shall be an abandonment of the property, and AVIATION may retain the property and all rights of LESSEE with respect to it shall cease or, by notice in writing given to LESSEE with 30 days after removal was required, AVIATION may elect to hold LESSEE to its obligation of removal. If AVIATION elects to require LESSEE to remove, AVIATION may effect a removal and place the property in public storage for LESSEE'S account. LESSEE shall be liable to AVIATION for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by AVIATION. LESSEE hereby appoints AVIATION its agent for the limited purpose of obtaining adequate storage for the personal property of LESSEE in the event that LESSEE fails to remove its personal property as described above. LESSEE authorizes AVIATION to incur reasonable and necessary costs to store LESSEE'S personal property in LESSEE'S name and at LESSEE'S expense, and LESSEE shall fully reimburse AVIATION for all costs so incurred.*

*Upon Lease Expiration - Upon expiration or termination of this Lease or earlier termination on account of default, Lessee shall surrender the Premises in good condition.*

**Klamath Falls Airport**  
Linda Tepper, Business Manager

Ms. Tepper advised that they have two types of leases with regard to reversion. One is a reversion lease, and the other has a buyout clause. A tenant chooses which one they want, and both reflect essentially 45-year terms. However, the rent charged on the "buyout leases" reflects a premium rent fee.

**Buyout Lease**  
**Surrender of Possession**

*Buyout Provision - In consideration of the premium rent fee referenced in Section 7. Rent, Subsection B., the Airport agrees to purchase the improvements at an appraised value. The appraiser shall be mutually accepted to the parties and shall be an MAI (or equivalent) appraiser with special knowledge in aviation and airport properties. The cost of the appraiser to be split equally between the parties. At the 45<sup>th</sup> year of this lease, Airport will be obligated to buy the improvements at the appraised value unless the parties agree to some other agreement prior to that date.*

*Tenant Termination - If Tenant should elect to terminate this lease at any time, the above Buyout Provision will not apply. (Sale of improvements and transfer of this lease, is not considered a termination by Tenant.) Upon early termination at Tenant's sole discretion, Tenant shall have the*



*option of removing all improvements and restoring the property to its original condition, or giving title to said improvements to Airport.*

*If Tenant elects to remove improvements, this must be done within ninety (90) days after termination of this lease. If Tenant fails to remove improvements, Airport may take possession of the premise.*

**Reversion Lease**

*Surrender of Possession - Title to all Improvements constructed by Tenant upon the Premises, and all alterations or additions thereto required by Airport to remain, shall remain in Tenant until the expiration, cancellation, or other earliest termination of this Lease. Upon said expiration, cancellation, or earlier termination of this Lease, Tenant shall have the option of removing all improvements to Airport, title to said Improvements shall vest in the Airport, and said structures, buildings, and improvements shall remain upon and be surrendered with the Premises as part thereof.*

*Title to personal property belonging to Tenant shall at all times during the term of this Lease, or any extension thereof, remain in Tenant, and Tenant shall have the right at any time to remove any or all personal property of every kind and nature whatsoever which Tenant may have placed, affixed, or installed upon the Premises, provided that upon Tenant's removal of such personal property, Tenant restores the Premises to its original condition. Tenant shall have the right to remove same provided that upon any such removal, Tenant shall repair, at its own expense, any damages resulting therefrom and leaves the Premises in a clean and neat condition, with all other improvements in place.*

*If Tenant elects to remove improvements, this must be done within ninety (90) days after termination of this lease. If Tenant fails to remove improvements, Airport may take possession of the premise.*

**Ashland Municipal Airport**

Dawn Lamb

The following lease language is for a commercial service provider lease.

*Ownership of Improvements. Title to all improvements made by Lessee of a permanent nature shall be the property of Lessee.*

*Lessee, however, shall be required to enter into a ground lease with the City prior to any improvement being made that increases the footprint of existing structures or that utilizes additional land at the airport. Ground lease fee shall be at fair market rental value.*

*Prior to construction of any improvements, the parties agree to negotiate in good faith as to ownership of the improvements to be constructed. Unless previously agreed in writing between the parties, the improvements shall become property of City, free and clear of all claims of Lessee, any one claiming under Lessee or caused, permitted or suffered to attach through Lessee upon completion of construction and issuance of a certificate of occupancy. Lessee, or any one claiming under Lessee,*

*shall indemnify and defend City against all liability and loss arising from such claims. Upkeep. The premises shall be kept in good repair, free of waste material and debris. Landscaping shall be maintained and properly watered in a reasonable fashion.*

**Right of first refusal.**

*For other than month-to-month rentals, City shall have the following described right of first refusal with respect to the interest of Lessee under this lease:*

*Lessee shall not sell, sublease, assign or transfer to anyone other than City, unless Lessee shall have first communicated to City, by written notice, a written offer to sell, sublease, assign or transfer this lease or any interest, which offer shall specify, in commercially reasonable detail, the rates, terms and conditions upon which Lessee is willing to sell, sublease, assign or transfer this lease or any interest. City shall have a period of 30 days, following the notice, within which to accept the offer by giving Lessee written notice of acceptance. If the offer is accepted, the parties shall be obligated to close the sale, sublease, assignment or transfer in accordance with the terms of Lessee's offer. Closing shall occur within 60 days following acceptance or within such longer closing period as may be specified in the offer.*

*If City does not accept the offer, Lessee may sell, sublease, assign or transfer the lease or any interest to any other party, provided that such a sale must be consummated within 60 days following the earlier of the expiration of the 30 day acceptance period specified in paragraph 18.1.2 for the offer or the date of any written rejection of the offer by City, and for and upon the same price, terms and conditions as those specified in the offer. City's rights under this paragraph shall apply to any subsequent or contemporaneous offer made to Lessee or Lessee's successor or successors in interest. For the purposes of this subparagraph, a devise under a will by the Lessee shall not be considered a sale, sublease, assignment or transfer.*

**Option to Purchase Lessee's Interest.**

*For Type B leases, in addition to the right of first refusal described above, City shall have the exclusive right and option to purchase all of Lessee's right under this lease upon the following terms and conditions:*

*If City exercises this option, the purchase price during the initial year of this lease for Lessee's rights under this lease will be the actual reasonable construction cost of the hangar plus 10%. The purchase price during each subsequent year shall be the purchase price determined in the immediately preceding sentence less 1/25<sup>th</sup> of such purchase price for each full year the lease has been in effect. This option shall be exercised by written notice given by City to Lessee at any time, which notice shall specify that City has elected to exercise this option. Closing shall occur as soon as possible following exercise of this option by City and, in any event, not later than the 35<sup>th</sup> day following the date of exercise of this option.*

*At closing, Lessee shall deliver to City a duly executed and acknowledged statutory quitclaim deed quit claiming all of Lessee's rights and interest in the premises free and clear of all liens and encumbrances of Lessee, anyone claiming under Lessee or caused, permitted or suffered to attach through Lessee.*



*At closing, City shall pay to Lessee in cash the entire amount of the purchase price. City's rights under this paragraph shall apply to any successor of Lessee and shall apply whether or not City exercises its rights under the right of first refusal paragraph. City may not exercise its rights under this paragraph while the Lessee who signed this lease is in possession and has not sold, subleased, assigned or transferred its interest in the lease. For the purposes of this subparagraph, a devise under a will by the Lessee shall not be considered as sale, sublease, assignment or transfer.*

**Subleases without consent**

*Lessee may sublease portions of the premises for the purpose of placing other aircraft within the hangar without consent of City.*

**Arcata/Eureka Airport**  
Jeff Moore, County of Humboldt

Mr. Moore provided this Ground Lease Language utilized by the County:

**OWNERSHIP OF IMPROVEMENTS**

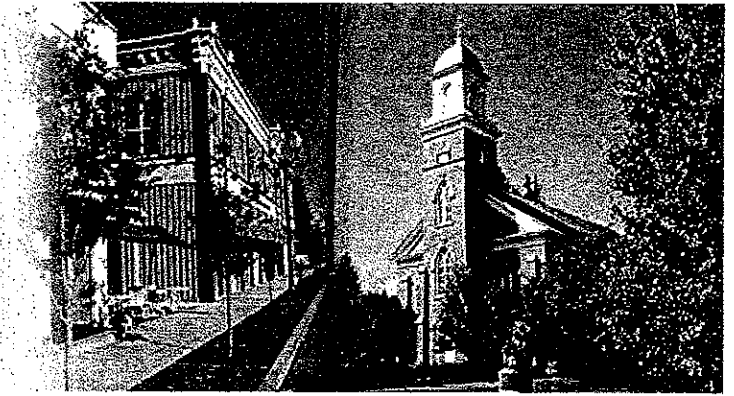
*Title to all improvements, including the hangar, to be constructed on the premises by LESSEE shall be owned by LESSEE until expiration of thirty (30) years and any options from the commencement date of this Lease or earlier termination of this Lease. All improvements, including the hangar, on the premises at the expiration of the term or earlier termination of this Lease shall, without compensation to LESSEE, then automatically and without any act of LESSEE or any third party become COUNTY'S property. LESSEE shall surrender the improvements to COUNTY at the expiration of the term or earlier termination of this Lease, free and clear of all liens and encumbrances, other than those, if any, permitted under this Lease or otherwise created or consented to by COUNTY. LESSEE agrees to execute, acknowledge, and deliver to COUNTY any instrument requested by COUNTY as necessary in COUNTY'S opinion to perfect COUNTY'S right, title, and interest to the improvements and the premises.*

*LESSEE shall have the right to remove such personal property, machinery, and equipment as may be removed without threat to the structural integrity of any building or improvement. If damage results from the removal of any such items, LESSEE shall repair such damage at its sole expense.*

## SECTION IV

### CONCLUSIONS AND RECOMMENDATIONS

Whenever a governmental entity is working with the private sector, disagreements are going to occur. Discussions will be interpreted differently by each side, and documents will be reviewed and interpreted with sometimes opposing perspectives. With the addition of financial components, these differences can become extreme. As such, in our analysis of this issue, *ABS* had to continually remain cognizant that regardless of the best intentions of tenants and the City in trying to reach a mutually agreeable solution on the reversion issue at 36U, it may not be possible without external assistance. Therefore, *ABS* had to utilize our experience and knowledge gained from many years of experience working with other airports and other airport tenants to come to a fair and equitable and non-discriminatory solution for tenants, while still maintaining the fiduciary responsibility of the Airport and compliance with its Federal obligations.



It is understood that in both instances of leases that until each lease document comes to conclusion the Tenant and the City each has the right has the obligation to follow each leases covenants and directives. If the parties mutually agree to change the nature of the agreements for the betterment of each party such as extension of term, change in land rates or should the hangars need to be removed for construction then the negotiated terms, rates and reversionary clauses must be made consistent and with current appraised market rates. In general all leases should be amended to include language that is generally consistent with the sample lease contained in the Addenda. The only differences could be in the language for Tenant hangar ownership (non-reversionary) or City hangar ownership (reversionary).

Regarding the reversion and non-standard lease issues, in the past, Heber City had a conglomeration of lease requirements, some allowing improvement removal, others requiring reversion of the title to the City. The City and the Airport desires to make all lease language the same, thus treating all tenants similarly. The Federal Aviation Administration (FAA) supports that decision, because it helps promote consistent treatment of tenants. A mixture of requirements for the same type lease would result in disparate treatment. The change in policy, to require reversion of improvements to the City at lease termination, or to require their removal, is entirely within the prerogative of the City upon lease renewal. This plan is not considered to be unjustly discriminatory or unreasonable. Capital improvements include such things as buildings, fences, paving,

landscaping, and anything fixed to a building or land. We support the City's decision to implement a standard reversionary clause in its leases upon lease renewal, in order to bring about a degree of uniformity. It is common for permanent capital improvements made to or on land to become the property of the landowner at the termination of the lease.

The following is a summary of pertinent issues and ABS recommendations with regard to amendments in the way leases are handled at the Airport.

### ***GENERAL CHANGES TO AIRPORT FEE STRUCTURES IN THE FUTURE***

For future planning the City and Airport must plan for increases in activity and therefore increases in operating expenses and overhead. The City should establish a baseline policy for market land rates of \$0.30 per square foot for improved land and \$0.15 per square foot for unimproved land. These rates should be escalated annually based upon changes in the Consumer Price Index (CPI), with a review every 3 to 5 years based on an appraisal or market rent analysis.

In addition, the City should increase its fuel flowage fees from the current \$0.02 per gallon of fuel delivered to a rate of at least \$0.05 per gallon of fuel delivered. This will make the rate more consistent with comparable general aviation airports both in the region and nationally. Said rate should also be reviewed annually and periodically adjusted to reflect changes in the maintenance and operation costs of the Airport.

### ***HANGAR ROW TENANTS (REVERSIONARY)***

When the leases of the existing Hangar Row tenants expire, there must be a revision to the documents which includes option to increase rental rates to prevailing market rents for the land. Prevailing market rents should be based upon the area of the footprint of the hangar, plus a premium (not less than 20%) to reflect the benefits gained from surrounding property that is not part of the lease, but cannot be utilized or leased for other purposes. It is obvious that the current \$50 per year land rent is well below market.

With regard to future lease terms, it is likely that the area where these hangars are located will be required for Airport infrastructure expansion and/or safety enhancements. As such, future lease terms should be limited, based on the fact that the City may need to remove facilities due to Airport enhancement. By limited, it is suggested that future lease terms be on a month-to-month basis only, which will give the Airport

maximum flexibility should these facilities need to be demolished. If month-to-month is not deemed practical by the City, then a maximum of a one-year lease should be considered. In order to placate tenants, it is also advisable to provide existing tenants within Hangar Row the first right of refusal on any new hangars constructed by the City, at the prevailing market rate. Future leases must have more definitive language for actions and expectations at termination.

### ***OWNED HANGARS (NON-REVERSIONARY)***

Upon expiration, the non-reversionary leases at 36U should be based upon new lease terms of 20 years, but with the stipulation that the City reserves the first right of refusal to purchase the improvements at the prevailing fair market value at lease termination. In addition, it should be clearly stated that if the City elects not to purchase the hangars, the hangar must be removed and the site brought back to a clear and site-ready pad. The additional 20 years, coupled with the remaining term on current leases, should provide the hangar owner with sufficient time to amortize their investment. Moreover, most hangars will have limited economic or physical value at that time due to age, likely condition, and potential obsolescence. This is consistent with current lease language, whereby the tenant "owns" the hangar, but is not guaranteed a perpetual ground lease.

Should a current hangar owner elect to sell their hangar to a third party prior to lease termination, the Airport should retain the right of first refusal to purchase the hangar at the prevailing market value. If they elect not to purchase the hangar, the City should impose a "transfer fee" equal to two (2%) percent of the selling price of the hangar to account for the time and administrative efforts to facilitate such a transfer.

Land rents should be adjusted to prevailing market rates at the earliest opportunity, with annual escalations based upon CPI adjustments and periodic reviews to assess prevailing rates.

### ***FBO LEASE AGREEMENTS***

The current FBO, OK3 Air, has requested a lease extension based upon recent improvements to their FBO terminal facility. It is the opinion of *ABS* that it is not in the best interest of the City to extend the current FBO lease unless the FBO owner is willing to renegotiate and restructure the entire lease to reflect current market conditions, including current market ground rental rates. At present, it is our opinion that the City is not receiving a fair return on the FBO land assets. In particular, the ramp/apron area it leases to the FBO on an exclusive basis could hinder future grant money from the FAA. In addition, the limited improvements

done to the terminal and hangar facilities are much less than would typically be considered to warrant an extended lease term, especially given the other below market terms of the lease. In fact, in the future, the FBO facilities will need to be expanded/improved substantially to compete with other FBO facilities in the area, particularly those that draw much of the corporate business at SLC. As the market matures and additional corporate traffic begins to move to Heber City, additional lease term, based on extensive improvements, should be considered, but only with other lease conditions reflecting prevailing market terms.

### ***RFP FOR NEW HANGAR DEVELOPMENT***

With regard to future development opportunities at 36U, *ABS* strongly recommends the issue of an RFP for new hangar development at 36U. This scenario would bring in additional money to the Airport through a larger development process, and a single-entity developer would likely have a better chance of funding this type of project as opposed to a large number of individual trying to compete for local money. The construction would be consistent, more timely, and easier to maintain and control from an Airport management perspective. The Airport, through the RFP process, could assist in the establishment of reasonable rental rates through land lease negotiation and long term leases. This would also provide a much faster development time for one single developer compared to several hangars being built by many different contractors. It is suggested that due to the encroachment of development from Park City, that there would be considerable interest in the development of a hangar complex at Heber City.

### **COMMENTARY ON TENANT MEETINGS**

General observations and answers to questions raised at the Tenant meetings have been addressed by *Airport Business Solutions* as follows:

#### **Hangar Row Tenant Meeting (Reversionary Leases)**

1. The first comment was regarding the uncertainty of what happens to lease issues with a new administration. Tenants want a better definition of what takes place at termination of leases.

*ABS concurs that more definitive language must be included to define termination parameters.*

2. How is the value of a hangar determined upon decision to move hangar row?

*By third party appraisal mutually agreed to by City and Tenant.*

3. What is the value of the hangar improvements vs. the base hangar?

*Hangar value includes all permanently installed fixtures and equipment.*

4. Will the City value each hangar individually?

*Yes, as stated above with an approved appraisal process.*

5. It is common to have two different kinds of leases on an airport?

*It is common but not encouraged by the FAA.*

6. Wouldn't it be better to have only one kind of lease on the Airport?

*Yes, this is preferred.*

7. Relocation of hangars "maybe the wrong term". Under the Federal Relocation ACT will there be a buy-out of hangars with a 1<sup>st</sup> right on new hangars at new location?

*If hangars must be relocated, a negotiated move, buy out or first right to new hangars by a third party may be negotiated.*

8. We have been through this before and nothing happens. Why are we looking at taking down hangar row?

*ABS is not looking at taking down hangar row.*

9. When does the first hangar lease come to an end?

*Unknown at time of writing.*

10. Are we (ABS) looking at the Master Plan?

*This is not a part of the scope of this project.*

11. Any change in leases today would only mean more money to the City?

*City is looking for a win-win scenario including trade-offs for longer term vs. rates.*

12. Non reversionary leases are not that common. Are there any that have converted?

*Yes there are airports that have converted to consistent language for reversions.*

13. Would you (ABS) advise the City to stay with current plan or change reversionary status?

*ABS prefers reversionary clauses because it protects the airport sponsor and puts the facility in a better situation with FAA for future funding and expansion.*

14. Why aren't leases that change hands changing dollar amounts and terms?

*They should be changing including transfer fees in new leases.*

15. Airport expectation is that facilities will expand. Is this review preparing the City for this scenario.

*Yes.*

16. Would a new scenario be forced on all tenants or negotiated individually?

*It is not recommended that any scenario be forced on tenants, but rather renegotiated based on a mutual agreement that benefits both parties in the long term.*

17. Can the City raise the \$50 fee "contract"?

*No, unless agreed to by both parties in a renewal scenario.*

18. What about a single developer for new hangars - "rent controls"?

*A third party developer could be a logical scenario that would allow for better funding, consistent construction style and easier management for the City.*

19. Hangars are decreasing in value - How do we change this scenario? Formula for buy-out of hangars?

*Buy using better language that provides stronger guarantees at the end of the term.*

#### **Box Hangar Tenant Meeting (Non-Reversionary Leases)**

1. In essence, their leases are reversionary. 5 - years there is opportunity to take hangar buildings off site. "Quasi Reversionary"

*Yes, leases need better termination terminology here.*

2. Address a way to renew leases.

*There needs to be a mechanism to exchange money for longer term.*



3. Challenge structure - buy-in of every hangar owner - quality of upkeep an issue.

*This is the reason for having a third party developer.*

4. Declining value asset if no opportunity for renewal - assuming hangar is in good condition.

*Longer term should preclude this if better maintained.*

5. Need more clarity for renewal language for "lenders".

*Yes.*

6. Need a mechanism to exchange money/investment for longer term.

*Yes, as stated previously.*

7. Length of term beyond 20 years.

*Yes, we suggest 30 years.*

8. What protection does the City need and what protection does the tenant need?

*Mutual agreement that benefits both parties.*

9. City needs fair compensation with options in case of re-developments

*This is key to the future of the field and ability to draw larger aircraft.*

10. Tenants need quiet enjoyment.

*Lease language that provides for better conclusion at end of term.*

11. Need leases commensurate with investment.

*Yes, longer term for more dollars invested - but at levels that are consistent in the industry.*

12. Leases need a maintenance standards clause.

*Yes.*

13. What about new improvements needed at the airport? Taxi-lanes for new hangars, access gates, RFP for new developer?

*See recommendations for developer.*