

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Transfer of Lease D3 to C1 – Shaun Brautigan

DATE: 2/2/2024

RECOMMENDATION

POLICY DISCUSSION

BUDGET INFORMATION:

STATUS REPORT

ANNUAL- \$0

OTHER

CAPITAL- \$0

PRESENTED BY: Bill Harden

COMMISSION ACTION REQUESTED ON: February 19, 2024

PURPOSE: Transfer of hangar lease from D3 to C1 – Shaun Brautigan

BACKGROUND / HISTORY: Hangar C-1 was available and Shaun Brautigan, who is in hangar D-3 asked if he could switch to C-1. He flies a Lance Air Turbine that is very heavy with 200gallons of fuel in it. When this plane is parked, there is a slope to pull his plane out and he can hardly get it out physically. Also, his wings are quite long, and C-1 would allow him to get in and out of his hangar. He has asked if Habersham Co. would allow him to switch.

FACTS AND ISSUES:

- 1) Hangar C-1 has been open since the previous tenant wrecked his plane and vacated the hangar
 - 2) Shaun Brautigan is interested in moving from his existing hangar (D3) to C1, which accommodates the size of his airplane much better than D3.
 - 3) The airport commission approved this transfer at their regular meeting on February 13, 2024.
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OPTIONS:

- 1) Approve recommendation
 - 2) Deny recommendation
 - 3) Commission defined alternative
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RECOMMENDED SAMPLE MOTION:

- 1) Approve recommendation to transfer Shaun Brautigan's lease agreement from Hangar D3 to Hangar C1.
 - 2) Deny recommendation to transfer Shaun Brautigan's lease agreement from Hangar D3 to Hangar C1.
 - 3) Commission defined alternative.
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DEPARTMENT: Airport

Prepared by: Bill Harden

Director: _____

**ADMINISTRATIVE
COMMENTS:** _____

_____ **DATE:** _____

County Manager

HANGAR LEASE AGREEMENT
HABERSHAM COUNTY AIRPORT

This Hangar Lease Agreement ("Agreement") is made and entered into this 1st day of February, 2024, by and between HABERSHAM COUNTY, GEORGIA, ("County") and Shawn Brantigan ("Lessee") (hereinafter collectively referred to as "Parties"). In consideration of the promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the County does hereby agree to lease to Lessee the Premises stated herein, and Lessee does hereby agree to lease the Premises from the County, on the following terms and conditions:

1. GENERAL DEFINITIONS.

(a) "Default" shall mean the failure to timely perform or comply with any requirement, term, provision or condition of this Agreement.

(b) "Material Breach" shall mean any default not cured by the time specified in this Agreement.

(c) "Lessee" shall mean the party named as Lessee, as specified above, and Lessee's agents, employees, contractors, members, partners, subsidiaries, personal representatives, successors in interest and assigns. In the event of a partnership, limited liability company, corporation or similar entity, the maximum number of partners, shareholders, members or others having ownership interest in the Aircraft is three. Each of the partners, shareholders, members or other owners of the Aircraft must execute the Agreement.

(d) "Airport" shall mean the Habersham County Airport located in Habersham County, Georgia.

(e) "Premises" shall mean Hangar No. C-1 located at the Airport.

(f) "Aircraft" shall mean the aircraft identified in this Agreement.

2. TERM.

The term of this Agreement shall commence on 2/1/2024 ("Commencement Date"), shall be for a term of one year, expiring at midnight on the 365th day after the Commencement Date. Provided Lessee is in compliance with the terms and conditions of this Lease, this Lease shall automatically renew for an additional one year term at the rental rate set forth herein.

3. RENTAL RATE.

(a) The rental rate shall be \$ 200 per month, payable on the first day of the month. In the event the County has not received Lessee's payment by the tenth day of the month, in addition to the monthly rent, Lessee shall be assessed a late fee of \$20.00, which shall be due and payable along with the rent due for that month.

- (b) For any renewal term, the rental rate shall be adjusted to fair market value rates as determined by rates for comparable hangar space in airports located throughout north Georgia. Lessor shall notify Lessee of the adjusted rental rate 30 days prior to the renewal term.

4. Use of Premises; Registration and Storage of Aircraft

- (a) The premises shall be used for the storage of the following Aircraft:

Model	Identification Number
<u>Lance Air/Extra</u>	<u>N7005B</u>
_____	_____

- (b) Lessee shall provide County with copy of the FAA aircraft registration evidencing Lessee's ownership of the Aircraft. In the event Lessee sells the Aircraft identified herein, including a transfer, sale or gift of more than 49% of Lessee's ownership interest in the Aircraft, Lessee shall so notify County of date of sale, and Lessee shall have six months there from to acquire and notify County of a subsequent aircraft, or cancel this Agreement and surrender the Lease Premises. Lessee must submit a copy of the new aircraft's FAA registration to the County within 30 days after the date of acquisition. Aircraft may not be stored in the Lease Premises unless (1) the Lessee holds at least 51% ownership interest in the Aircraft or in the entity owning the Aircraft; and (2) all provisions regarding notice to County of Aircraft ownership are followed.
- (c) Lessee shall have the right to use and possess the Premises for aviation related activities, subject to, and pursuant to, the Rules and Regulations of the Habersham County Airport, as may be amended from time to time. A copy of the Rules and Regulations in effect as of the date of this Agreement is attached as Exhibit 'C'.
- (d) Lessee represents and warrants that at the time of the execution of this Agreement, Lessee is the registered and legal owner of the Aircraft. In the event Lessee intends on storing Aircraft in the Premises, but has not obtained ownership as of the date of this Agreement, Lessee shall have 60 days from the date of this Agreement to acquire ownership. In the event Lessee has not obtained ownership within said 60 day time period, this Agreement shall terminate at the expiration of said 60 day period.
- (e) Unless Lessee is paying ad valorem taxes on the Aircraft to another state and/or county in connection with Lessee's rental and storage of the Aircraft at such location, Lessee agrees to return and pay ad valorem taxes on the valuation of the Aircraft to the Tax Commissioner of Habersham County, Georgia.
- (f) Lessee shall not exercise the rights granted herein in any manner which would interfere with the departure or arrival of aircraft or with the rights granted by the County to other customers assigned space in hangar building.
- (g) No more than two Aircraft may be stored in the Premises. No aircraft other than those listed in this paragraph shall be stored in the Premises without the written consent of the County.
- (h) Use of the Premises as a workshop, repair shop, maintenance shop, or any commercial activity is strictly prohibited. Major aircraft repairs, including painting, is

strictly prohibited. Only minor repairs and preventative maintenance authorized by F.A.R. Part 43, to be performed by aircraft owner, will be allowed. With prior authorization of County Manager, final assembly of finished aircraft that are homebuilt or restored may be allowed. Disassembled aircraft and aircraft parts shall not be stored therein indefinitely. Storage of boats, furniture, lawn mowers and other non-aviation items is prohibited. However, temporary storage of the Lessee's vehicle in the Lease Premises while Lessee's aircraft is in flight, or for short term travel, is allowed.

5. Maintenance of Premises; Alterations

- (a) Lessee shall maintain the Lease Premises in a good, clean and secure manner which is acceptable in appearance and does not create fire or other safety hazards. Lessee agrees to return the Lease Premises in the same clean and good condition as delivered at the termination of the Lease. If the Lease Premises are not being adequately or appropriately maintained, County, may, at its sole option, after giving ten days written notice to Lessee of the condition, and the opportunity to cure same, cure such condition and cause such repair and maintenance to be done, if Lessee has not done so. If such repairs or maintenance are performed by or on behalf of County, the cost of any such maintenance or repair shall be treated as additional rent. County may, at its sole discretion, elect to treat such failure to properly maintain the Lease Premises, or Lessee's failure to pay said repairs and maintenance costs, as billed, with the next installment of rent, as a material breach of this Agreement by Lessee.
- (b) Lessee shall not make nor allow any alterations, improvements or additions to the Lease Premises without prior written permission of the County. All such alterations, improvements or additions shall become fixtures and the property of the County. As such, no alteration, improvement or addition shall be removed without the express written consent of the County. Lessee shall permit County free access to Lease Premises at all times without notice.

6. UTILITIES

Lessee shall during the term hereof pay all charges for telephone, gas, electricity, sewage and water used in or on the leased premises and for the removal of rubbish and trash therefrom immediately upon becoming due and payable and shall hold County harmless for any liability therefor.

7. NOTICES.

Any notice required to be sent hereunder shall be sufficient when sent by first class mail; email, or by facsimile to the following address (must be street address):

Lessee:

NAME: Shaun Broutgen

ADDRESS: 461 Flying Ranch Dr.

COUNTY: Clayton STATE: GA. ZIP: 30525

PHONE: 404-886-4353

EMAIL: Shaun@ARS.BIZ

Address of which invoices are to be sent (if different from above):

NAME: Same as

ADDRESS: _____

COUNTY: _____ STATE: _____ ZIP: _____

PHONE: _____

County:

8. TERMINATION.

- (a) Either party to this Agreement shall have the right, with or without cause, to terminate this Agreement on 30 days written notice given to the other party. Additionally, County may terminate this Agreement at any time and without prior written notice in the event of violation of laws, rules, regulations, signs, or the lawful instructions of County, or in the event of the disregard or breach of any of the terms or conditions set forth herein. Termination for any reason shall not relieve Lessee from liability incurred prior to such termination and prior to removal of all Lessee's property from the Airport. Upon termination, Lessee shall, at Lessee's own cost and expense, immediately remove Lessee's aircraft and all personal property and restore the Lease Premises as nearly as practicable to the same state and condition as at the inception of this agreement. Should Lessee fail to remove Lessee's aircraft and/or personal property, County shall have the right to remove said aircraft and all personal property, without further notice and without court order. The County will also have the right to repair and restore the Lease Premises to rentable condition, and Lessee shall be responsible for all costs or repair or restoration.
- (b) In the event termination occurs in one month, but any property of, or property subject to the control of, Lessee remains in Lease Premises for any portion of a subsequent month, the rent for the next successive month is due and payable in its entirety.

9. SECURITY FOR PAYMENT.

Lessee hereby grants to County a lien against Lessee's aircraft and all personal property which Lessee may from time to time store in the aircraft or in the hangar in which the aircraft is parked. This lien shall exist and continue for all unpaid amounts which Lessee may owe County from time to time, and the assertion of the lien shall not relieve Lessee from the obligation to pay the monthly fees as herein provided. In the event Lessee does not fully and immediately discharge all unpaid amounts, County is hereby granted and shall have the right to take and recover possession of Lessee's aircraft and satisfy its lien. County may also take and recover possession of any personal property stored by Lessee on the Lease Premises, without notice or other action and exercise its lien against the same and, in addition thereto, recover all costs and expenses including attorney's fees in connection with the repossession of said aircraft or personal property and assertion of its lien.

10. LESSEE'S OBLIGATION TO COMPLY.

Lessee agrees to and shall, at Lessee's sole expense, comply with all statutes, ordinances, resolutions, rules, and regulations of the federal, state and local governmental agencies and the County, the covenants and restrictions of this Agreement, any and all directives concerning airport operations and flight safety issued by County, and requirements of any fire insurance underwriter or rating bureau. Lessee understands and agrees that Lessee is subject to

any and all new regulations which may be imposed by the local, state or federal agencies whether or not they reflect a change in law and/or policy from that now existing, during the term hereof, relating in any manner to Lessee's occupation of the Lease Premises. Lessee also understands and agrees that Lessee is subject to severe restrictions on Lessee's activities on the Airport due to environmental concerns, statutes, regulations, ordinances and rules. Lessee agrees to conform its use of the premises to lawful uses only. County may elect to treat any violation of statutes, ordinances, resolutions, rules, regulations or directives not corrected within ten days of notice by County as a material breach of this Agreement by Lessee.

11. INDEMNITY - CASUALTY - FORCE MAJEURE.

(a) Lessee agrees to release, indemnify and hold harmless the County and its agents, officers, employees, successors and assigns from and against any and all liability, damages, business interruptions, delays, losses, claims, judgments of any kind whatsoever including all costs, attorneys' fees, and expenses incidental thereto, which may be suffered by, or caused to, County by reason of loss or damage to any property or injury to, or death of, any person arising from or by reason of Lessee's use of the Airport and Lease Premises not arising out of the willful misconduct or gross negligence of the County. Lessee shall further indemnify and hold harmless the County from and against any and all claims, costs and expenses arising out of any act or omission of Lessee or of Lessee's agents, employees, contractors, partners or invitees and from and against all costs, attorney fees, expenses and liabilities incurred by the County as the result of any such use, conduct, activity, work, things done, permitted or suffered, breach, default or negligence, including but not limited to the defense or pursuit of any claim or any action or proceeding resulting there from. In case any action or proceeding is brought against the County by reason of such matter, Lessee, upon notice by the County, shall defend the same at Lessee's cost. The County need not have paid any such claim in order to be so indemnified.

(b) The County will not be responsible for theft, loss, injury, damage or destruction of Lessee's property or any injury to Lessee, or Lessee's agents, contractors, employees, invitees, clients, partners, successors or assigns, it being specifically understood that the fees and rents charged hereunder are for the privilege of storing aircraft on the Lease Premises only.

(c) The County shall not be liable for failure to perform this Agreement or for any loss, injury, damage or delay of any nature whatsoever caused by or resulting from any act of God, fire, flood, accident, strike, labor dispute, riot, insurrection, civil disturbance, war or any other cause beyond its control.

12. INSURANCE.

(a) Without limiting Lessee's indemnification of the County, Lessee shall provide and maintain, at its sole expense, during the term of this Agreement, the policy or policies of insurance with the following limits of coverage covering its operations and liabilities hereunder. Such insurance shall be secured through a carrier satisfactory to County, and evidence of such insurance satisfactory to County shall be delivered to County on or before the effective date of this Agreement and upon each renewal date without notice from the County. Such evidence shall specifically identify this Agreement and shall contain express conditions that County is to be given written notice, at least thirty (30) days in advance, of any modification or termination of any policy of insurance. Such insurance shall be primary and noncontributory to any other insurance and shall name the County as additional insured.

Bodily Injury Liability - \$100,000 per person/\$1,000,000 per occurrence
Property Damage Liability - \$1,000,000 per occurrence
Single Limit Liability - \$1,000,000 per occurrence

(b) Failure to Procure Insurance – In the event of failure of the Lessee to procure or maintain the above insurance, this Agreement shall automatically terminate and Lessee shall surrender the premises immediately.

(c) The Amounts of Insurance required above shall be subject to annual review by the County to assure adequate coverage limits apply. County shall have sole discretion with respect to any adjustment of insurance limits and coverages.

13. VEHICULAR PARKING.

Motor vehicles occupying the airport as a result of Lessee's use of the Lease Premises must be parked inside the Lease Premises or in public parking lots designated by County. Motor vehicles must display current tags and meet applicable Georgia environmental and insurance requirements in order to park on the Airport. Motor vehicles shall not be parked in airport public parking lots for more than a 14 day time period. Any vehicle exceeding the 14 day period will be subject to be impounded by the County at the owner's expense. If the County, in its discretion deems it necessary, the County may withdraw, temporarily or permanently, without prior notice, the privilege of parking motor vehicles in any assigned area.

14. ENVIRONMENTAL HAZARD.

(a) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including reasonable attorneys' and consultants' fees) of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement, which are incurred as a result of the existence of Hazardous Material on, under or about the Lease Premises, including without limitation: (1) damages for personal injury or injury to property or natural resources occurring on the Lease Premises or the airport, foreseeable or unforeseeable; (2) fees incurred for attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of Hazardous Material, including but not limited to, the preparation of any feasibility studies or reports or any cleanup, remediation, removal, abatement, containment, closure, restoration, or monitoring required by any federal, state or local governmental entity.

(b) "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any federal, state or local governmental entity.

(c) In no event shall County be liable for incidental, special, exemplary or consequential damages including, but not limited to, loss of profits or products, or inability to use the Lease Premises. Lessee shall be liable for Environmental Damages due to any act or omission of Lessee with respect to the use, storage, or disposal of any Hazardous Material or with respect to damages caused by Lessee.

(d) Lessee shall not cause or permit any Hazardous Material to be brought on, treated, kept, used, stored, disposed of, discharged, released, produced, or generated in, on, under or about the Lease Premises and/or the Airport by Lessee, its agents, employees, contractors, subtenants, assignees, or invitees without the prior written consent of County.

(e) Lessee shall defend, indemnify and hold County harmless from any and all Environmental Damages relating to any Hazardous Material brought on, treated, kept, used, stored, disposed of, discharged, released, produced or generated by Lessee, its employees, agents, contractors, assignees, tenants or invitees during Lessee's occupation of the Lease Premises and/or the Airport, even if done with County's consent, and in addition, from any and all Environmental Damages arising from Hazardous Material in, on, under or about the Lease Premises and/or the Airport as a result of Lessee's occupancy of the Lease Premises.

(f) Notwithstanding Lessee's obligation to indemnify County, Lessee shall, at Lessee's sole cost and expense, promptly take action to remediate the Lease Premises and/or the Airport necessitated by the presence of Hazardous Material in, on, under or about the Lease Premises and caused by Lessee's use or occupancy of the Lease Premises. Such action includes, but is not limited to: investigation of the environmental condition of the Lease Premises and/or the Airport, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup or remediation. Lessee shall proceed continuously and diligently with such investigatory and remedial action. All action shall be performed in a good, safe and workmanlike manner. Lessee shall promptly provide to County copies of testing results and reports in connection with Lessee's action pursuant to this paragraph.

(g) If, in the discretion of the County, Lessee fails to complete remediation as described above within a reasonable time, County may, at its sole option, take action to cleanup or remediate Lease Premises or other affected areas. In the event such action is taken by County, Lessee will reimburse County for all costs associated with the cleanup or remediation. This subparagraph does not limit Lessee's obligations under this Agreement nor does it obligate County to perform any activities described herein.

15. INSPECTION OF PREMISES AND RIGHT OF ENTRY

Lessor shall have the right to inspect the Premises for compliance with the terms of this Lease by giving the Lessee at least 48 hours prior notice of the inspection. Lessee agrees to provide access to the premises for the inspection.

In the event of emergencies, or in the event of Lessee's default in the terms of this lease, Lessor shall have the right of entry with no prior notice to the Lessee. In such event, Lessor shall have the right to remove any locks which may have been placed upon the hangar in order to gain entry to the premises.

16. DEFAULT.

In the event of Lessee's default in the terms of payment or other terms of this Agreement, Lessor shall provide notice of such event of default to the Lessee, via email, or regular mail, at the address for Lessee stated herein. In the event Lessee does not cure such default within ten (10) days of the date of the notice, Lessee shall be in default of this agreement. In the event of default, Lessor shall have all remedies at law, including but not limited to the right to terminate this lease and take possession of the premises. No remedy or election of County hereunder shall be deemed exclusive, but shall, wherever possible, be deemed cumulative with all other remedies at law or equity. The terms of this Agreement are severable, and the unenforceability of any particular provision shall not affect the enforceability of the remaining provisions of this Agreement.

17. MISCELLANEOUS.

(a) Assignment and/or Sublet. Neither the Lease Premises nor any portion thereof shall be sublet to any third party whatsoever, except upon written consent of County. This Agreement is not assignable by the Lessee without the written consent of the County, which consent shall be in the sole discretion of the County. The following events shall be considered assignments of this Lease:

1. If either the Lessee or the owner of the Aircraft is a corporation or LLC, a change in the President, CEO, general manager or chief executive, unless such change is due to death or retirement.

2. Change in form of entity which constitutes Lessor or which owns the Aircraft, such as from individual to a corporation or a limited liability company, unless the initial individual Lessor(s) continues to own at least 51% of the stock or membership interest.

3. Transfer of more than 49% of the ownership interest of the Aircraft or in the corporation, LLC or other entity that owns the Aircraft, so that Lessor does not own at least a 51% interest in the Aircraft or the entity owning the Aircraft.

The purpose of the foregoing language is to prevent Lessors from circumventing the language in this Agreement prohibiting sublease or assignment of the Lease Premises, and this language shall be broadly construed to effectuate said intent. If the County, in its sole discretion, allows assignment of the Lease, then the County may require that the Lessee provide a guarantee in a form acceptable to the County, guaranteeing performance of Lessee's obligations under this Agreement. The County may also, in its discretion, require any additional individuals or entities using the Lease Premises to execute this Agreement.

(b) Attorneys Fees. If any legal action or proceeding be brought by the County to enforce any part of this Agreement, the County shall recover, in addition to all other relief, all reasonable attorneys' fees, expenses, and court costs incurred by the County.

(c) Notice. Any notice required or permitted to be given hereunder shall be in writing and shall be given by personal delivery or by posting said notice and mailing by certified mail the same business day and shall be deemed sufficiently given if personally delivered or addressed to Lessee at the address provided hereinabove in paragraph 9 of this Agreement.

(d) Authority to Execute. Each of the persons executing this Agreement as or on behalf of Lessee represents and warrants that he/she is signing and agrees to indemnify and hold the County harmless in the event such authority is found lacking.

(e) Governing Law. This Agreement shall be controlled and governed by the laws of the State of Georgia.

(f) Usufruct. The parties intend that the interest of Lessee in the Premises is a usufruct only.

(g) Severability. The terms of this Agreement are severable, and the unenforceability of any particular provision shall not affect the enforceability of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day, month, and year first above written.

Date: 2/1/2024

HABERSHAM COUNTY:

By: County Manager

Date: 2/1/2024

LESSEE:

By:  _____