

## **MERCED REGIONAL AIRPORT**

### **Assignment and Restatement of Ground Lease for Private Hangar**

THIS ASSIGNMENT AND RESTATEMENT OF LEASE AGREEMENT ("Lease"), is made and entered into in the City of Merced, County of Merced, State of California, as of the 14th day of September, 2015, by and between the City of Merced, a California Charter Law Municipal Corporation, hereinafter called "Lessor," and Hangar 42, LLC, a California limited liability company, as "Lessee".

### **W I T N E S S E T H**

WHEREAS, Lessor owns and maintains certain real property in the City of Merced, California, on which the Merced Regional Airport is operated; and,

WHEREAS, Lessor owns and/or leases the land upon which structures are built for housing and storing aircraft and related equipment ("hangars"); and,

WHEREAS, FWF, Ltd., as lessee pursuant to a Ground Lease with Lessor dated October 10, 2004, constructed a hangar within the Merced Regional Airport on previously undeveloped property of Lessor and leased the ground hereunder for a period of years as set forth herein; and,

WHEREAS, Flatstone Holdings, LLC, has failed to make payments from October 10, 2014 to October 22, 2022 which total \$14,656 owed to Lessor; and,

WHEREAS, Hangar 42, LLC, is assuming the Lease dated September 14, 2015, from, Flat Stone Holdings, LLC, and assuming all rights and obligations thereunder as of the date of this Lease, and Hangar 42, LLC, shall be referred to hereinafter as Lessee; and,

WHEREAS, Lessor by executing this Lease consents to the assignment by Flatstone Holdings, LLC.

NOW, THEREFORE, AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED AND AGREED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

**1. LEASED PREMISES:**

A. The Leased Premises in the real property located at the Merced Regional Airport, generally known or referred to as a portion of 059-420-056 and more specifically shown on the map, Exhibit "A" hereto, and more particularly described as Exhibit "B" hereto. However, these Exhibits shall be conformed to "as-built" drawings such that an 80' X 80' hangar is constructed upon what is defined as the Leased Premises.

B. The Leased Premises is leased hereunder with the express understanding, acknowledgement, and agreement that it is on an "as-is" basis or without warranty or representation as to its suitability on fitness for Lessee's purposes;

C. In light of subsection "B" above, if Lessee desires environmental or other testing of the property, Lessor will cooperate with the same, but Lessee shall be responsible for any cost or expense incurred.

**2. RENT:**

This Lease shall commence on the date it is approved by the Merced City Council, and shall continue for the initial and optional term(s) as set forth in Section 3 hereof, subject to earlier termination as provided in Section 25 hereof. The rents to be paid by Lessee shall be the sum of the following as appropriate:

A. Thirty-three cents (\$.33) per square foot for the Leased Premises annually for the current (third) ten (10) year period of the Lease (years 21-30) (\$2,112.00 annually); and,

B. If the Option Term is exercised by Lessee, rent for the Option Term shall be determined based upon an appraisal of the Leased Premises and a determination by such appraiser as to the fair market value of rent for the Leased Premises. Lessee is to submit an appraisal with the notice of election to exercise the option as set forth in Section 3B hereof. If Lessor determines Lessee's appraisal to be fair and equitable, then the rent for the Leased Premises shall be as stated in the appraisal. Should Lessor determine Lessee's appraisal not to be fair and equitable, Lessor shall commence an appraisal using an appraiser with the qualifications as stated in Section 3B. Upon completion of the Lessor's appraisal, the parties agree that the rent for the Option Term shall be midway between

Lessor's and Lessee's appraised rent. In the event Lessee occupies the Leased Premises after the Initial Term and no otherwise agreed rent is established, the rent for such period shall be on a monthly basis, double the last monthly rent under the Initial Term.

Lessee shall pay rent in advance, with the first year's payment due within ten (10) days of the execution of this Lease by both parties and such date shall become the Commencement Date of the Lease and the Annual Anniversary Date.

### **3. TERM, OPTION, TRIPLE-NET LEASE – TAXES AND INSURANCE:**

A. Unless terminated earlier pursuant to Section 25 hereof, the term of this Lease shall be for a period of thirty (30) years ("Initial Term"). However, Lessee may terminate this Lease at any time and be relieved of its Lease obligations by conveying to Lessor, free and clear, its entire interest in the hangar and any associated personally.

B. In addition to the Initial Term, at Lessee's option, this Lease may be extended for an additional term of fifteen (15) years ("Option Term"). In order for the Lessee to exercise the Option Term, Lessee shall provide Lessor no less than one (1) year's written notice delivered to Lessor pursuant to Section 30A hereof of Lessee's decision to exercise the option. The written notice to Lessor exercising the option shall include an appraisal of the fair market value of the Leased Premises for the Option Term. Said appraisal shall be performed by an experienced M.A.I. appraiser and paid for by Lessee. Should the M.A.I. designation no longer exist, then the appraisal shall be conducted by a similarly qualified and credentialed appraiser. Lessee, in order to be eligible to exercise the Option Term, must be in full compliance with all terms and conditions of this Lease and have had no more than three sustained violations of the Airport Rules and Regulations or no more than one conviction, including a plead of nolo contedere or no contest, to any violation of the Airport Rules and Regulations within the last three (3) years preceding the exercise of the Option Term.

C. This Lease is a "triple-net" Lease. Lessee shall be responsible for the payment and/or performance of all maintenance, provision of insurance coverage, and the payment of all taxes, liens, and assessments, including any applicable personal or real property taxes that may be levied against the structures and improvements owned or constructed by lessee and erected upon land owned by

Lessor. Lessee recognizes and understands that to the extent that this Lease creates a possessory interest subject to property taxation, Lessee is solely responsible for payment of any and all taxes levied or assessed during the term of this Lease against Lessee's possessory interest in the Leased Premises, without the right to deduct from rent due hereunder. Lessor expresses no opinion on the taxable affect of this Lease.

**4. DEPOSIT:**

A. Lessee shall deposit with Lessor upon execution of Lease a Good Faith Deposit of two-thousand-five-hundred dollars (\$2,500.00), in addition to a lump sum amount for \$14,656 for past payments owed.

B. Furthermore, if Lessee defaults with respect to any of the terms and conditions of this Lease, including, but not limited to, the payment of rent, Lessor may use, apply, or retain the whole or any part of this deposit for payment of any or all of the above mentioned purposes. Any remaining portion of such deposit shall be returned to the Lessee after expiration or termination of this Lease. In the event the deposit is applied to past due rent or to repair of facilities, Lessee shall replenish the deposit within thirty (30) days.

C. Lessee shall not be entitled to interest on the deposit.

**5. USE:**

A. The Leased Premises shall be used in a manner consistent with applicable law, for the construction of an executive/corporate quality hangar and thereafter shall be used solely for the storage of Lessee's flyable aircraft. Lessee may keep as an accessory to the primary aircraft storage use, one motor vehicle in the hangar consistent with Airport Rules and Regulations. Should the aircraft not be at the Leased Premises for more than three (3) months, unless otherwise agreed by the Airport Manager, than the motor vehicle shall be removed until the aircraft returns.

B. Lessor shall submit to the Airport Manager all aircraft tail numbers at the date occupancy of the hangar is granted by the City. Thereafter, Lessee must, within five (5) business days of any change in that tail number, provide in writing to the Airport Manager the new tail number. This same requirement applies to the storage of any aircraft expected to extend beyond thirty (30) days.

C. Any aircraft stored in the hangar not solely owned by the Lessee will pay the appropriate tie-down amount as determined in the Airport's Fees, Rates and Charges Resolution.

**6. REGULATIONS:**

The use of the Leased Premises by Lessee shall at all times be subject to all rules and regulations as constituted or adopted or hereinafter revised or adopted by the Airport Authority of the City of Merced, the City Council of the City of Merced, the Airport Manager, or the Federal Aviation Administration. Lessee shall become familiar with and must at all times abide by all airport rules and regulations pertaining to the use of the Leased Premises and the use of any of Lessor's facilities, whether the same is promulgated before or after the execution of this Lease. Lessee acknowledges by **any** of his signatures below that he has been provided a copy of the Airport Rules and Regulations.

**7. IMPROVEMENTS, CONSTRUCTION, & ALTERATIONS:**

A. Lessee may make improvements or alterations of any kind on and to the Leased Premises but only upon the prior written approval of the plans and specifications of the same by Lessor, including the design and construction thereof. Lessee must coordinate the design of any and all improvements on or to the Leased Premises with Lessor. Any such improvement, structure, and/or alteration by Lessee shall be at the Lessee's own and sole cost and expense. Lessee shall fund all costs of development, including demolition; architecture and engineering; site preparation; building construction; public improvements; fees and permits; and financing costs; except as otherwise expressly provided.

B. Any and all improvements constructed by Lessee on the Leased Premises shall become the property of Lessor at the termination of the Lease without regard to the cause for such termination – expiration of the Lease or termination for default by one of the parties hereto.

C. Lessee agrees to keep the Leased Premises free and clear of all liens and encumbrances, including any mechanic's liens. Lessee shall provide Lessor with a copy of labor and materials bond at one-hundred percent (100%) of the estimated cost of any improvements over Twenty Thousand Dollars (\$20,000.00) and a faithful performance bond in the amount of fifty percent (50%) of the estimated cost of the improvements. Copies of both bonds must be submitted to

the Airport Manager at least five (5) days prior to the commencement of the work on any improvements.

**8. SURVEY:**

If Lessee desires a survey of the Leased Premises, Lessee shall be entitled to have one prepared provided; however, that Lessor shall have no financial responsibility to Lessee or any surveyor for the cost or costs of the same. Lessor agrees to cooperate with Lessee in providing access to the Leased Premises to any surveyor retained by Lessee.

**9. MAINTENANCE:**

Lessee shall keep the Leased Premises and all improvements thereon in good repair and order. Furthermore, Lessee must keep the Leased Premises and all improvements thereon in a neat, orderly, and clean condition at all times and in accordance with safety and fire codes which may apply to aircraft hangar storage and other applicable Federal, State, and local laws and ordinances. Lessor may notify the Lessee in writing to conduct necessary maintenance, cleaning, and repairs of the Leased Premises. If the Lessee fails to perform such maintenance cleaning and repairs within a reasonable length of time (as determined in Lessor's sole discretion), Lessor may perform the same and charge the Lessee the full cost thereof which shall be due and payable upon demand from Lessee as additional rent.

**10. GATE KEY CARD DEPOSIT:**

Prior to issuance of a gate key card, Lessee agrees to pay a key card deposit specified in the Airport Rates and Charges Resolution adopted by the City Council of the City of Merced. Lessee agrees that this deposit will be forfeited if the key is ever lost or not returned within thirty (30) days after termination of this Lease.

**11. AIRPORT SECURITY PLAN:**

A. Lessee agrees to comply with all rules set forth in the Airport Security Plan that pertains to its operation under Federal Aviation Regulations (FAR), and other such applicable laws, such as the Aviation and Transportation Security Act, or the rules established by the U.S. Department of Homeland Security or the Transportation Security Administration (TSA), and 49 CFR 1500 *et seq.*

B. In accordance with FAR 107.11F and 49 CFR 1500 *et seq.*, all employers of individuals that have access to the Airline Operating Area (AOA) and restricted areas of the Merced Regional Airport must assure that the background of such employees are checked to the extent necessary to assure that permitting them unescorted access to any area on the Airport controlled for security reasons is appropriate. Background checks, to the extent allowable by law, will include at a minimum, references and prior employment histories, to the extent necessary to verify representations made by the employee/applicant relating to employment in the preceding five (5) years.

C. Lessee shall furnish the Lessor a duplicate set of keys for locks of any kind placed upon any structure on the Leased Premises. Lessor shall have the right of access to any structure on the Leased Premises as reasonably necessary to protect the health, safety, or security of the Airport.

**12. CHANGE OF ADDRESS:**

It shall be Lessee's responsibility to inform Lessor of Lessee's change of address within five (5) days thereof.

**13. REAL ESTATE BROKERS:**

Lessee agrees that Lessee has not involved, engaged, or employed a real estate broker for purposes of this Lease. Consequently, no real estate commission has been earned or is due for this transaction to any broker or agent. Lessee agrees to indemnify, protect, defend, and hold the Lessor harmless for any and all real estate commission claims related to this transaction.

**14. VOLUNTARY ASSIGNMENT:**

Lessee may assign its interest in this Lease with the prior written consent of Lessor, which shall be withheld only for good cause. In the context of an assignment, Lessee shall propose an assignee with financial strength and for permitted uses hereunder. Any such assignment, subletting, occupation, or use by any other person without such consent shall be void, and shall at the option of Lessor be cause to terminate this Lease.

**15. INVOLUNTARY ASSIGNMENT:**

Lessee agrees that, except as expressly provided herein, neither this Lease nor any interest herein shall be assignable or transferable by operation of law, except for devolution upon the death of the Lessee, and it is hereby mutually agreed, covenanted, and understood by and between the parties hereto that in the event of any proceeding under the Bankruptcy Act or any amendment thereto be commenced by or against Lessee, or in the event Lessee be adjudged or makes an assignment for the benefit of his creditors, or a writ of attachment or execution be levied on the leasehold estate created hereby, and not be released or satisfied within ten (10) days thereafter, or if a receiver be appointed in any proceeding or action to which Lessee is a party, with authority to take possession or control of the Leased Premises or the business conducted therein by Lessee, such action shall be deemed a default under this Lease and this Lease at the option of Lessor shall immediately end and terminate and shall in no way be treated as an asset of Lessee after the exercise of the aforesaid option; and Lessor shall have the right, after the exercise of said option, to forthwith re-enter and repossess itself of said Leased Premises as of its original estate.

**16. RIGHT OF RE-ENTRY BY LESSOR:**

It is expressly agreed that in the event Lessee creates or causes any breach of this Lease or the terms thereof, Lessor shall have the right and option to re-enter said premises, take possession thereof, and remove all persons and property therefrom without benefit of court order, and to exercise any and all rights provided by law or by this Lease.

**17. SURRENDER OF POSSESSION:**

A. At the expiration of this Lease, Lessee promises and agrees to deliver unto Lessor the said Leased Premises in as good condition as at the date of execution of this Lease, reasonable wear and tear excepted.

B. Lessee's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. Any personal property, trade fixtures, or equipment not removed by Lessee within thirty (30) days after the termination or expiration of this Lease, or any extension thereof, shall automatically become the property of the



Lessor. Lessee shall repair any damage to the Leased Premises caused by Lessee's removal of its personal property, trade fixtures, or equipment.

**18. COMPLIANCE WITH RULES AND REGULATIONS:**

Lessee shall comply with all rules and regulations of the Federal Aviation Administration, National Transportation Safety Board, U.S. Department of Homeland Security, and the U.S. Transportation Security Administration; and the laws of the United States of America and the State of California; and the Municipal Code of the City of Merced and all Rules and Regulations of the Merced Regional Airport as they now exist or may hereafter be enacted or amended. Lessor expressly reserves the right to enact, amend, and repeal provisions of the Merced Municipal Code and the Rules and Regulations of the Merced Regional Airport, and such actions shall, when effective, apply to this Lease and to Lessee's occupancy of the Leased Premises. Nothing herein contained shall be construed to permit Lessee, his employees or agents to use the said airport for or in connection with the operation of any regularly scheduled interstate or intrastate airline either for the transportation of person, property, cargo, or mail by air.

**19. NATIONAL EMERGENCY:**

Lessor reserves the right during time of war or national emergency to lease the landing area or any part thereof to the United States Government for military or civil use provided that if any such lease is executed, the provisions of this Lease shall be suspended insofar as they are inconsistent with the provisions of the lease to the United States Government.

**20. SUBORDINATION:**

This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required to be a condition precedent to the expenditures of federal funds for the development of the airport.

**21. CONDEMNATION:**

If any part of the Leased Premises of said airport is condemned, or its character is changed by public authority or otherwise, or in the event operation of said

airport for airport purposes is discontinued, or if any obstructions are placed on said airport or premises adjoining said airport so that it then becomes impossible or impractical to use said premises for the purposes for which they are leased hereof, either party shall have the right to terminate this Lease by giving the other party thirty (30) days written notice of such termination. Such termination shall be without prejudice to any claim for compensation Lessee or Lessor might prosecute.

## **22. INDEMNITY:**

A. Lessee agrees to indemnify, protect, defend (with counsel selected by Lessor), and hold Lessor, and its officers, employees, and agents free and harmless from any and all liabilities, claims, demands, actions, losses, damages, and costs, including all costs of defense thereof, caused by, arising out of, or in any way related to Lessee's use or occupancy of the Leased Premises, or occurring on the Leased Premises during the term of this Lease or any time of occupancy of the Lease Premises by Lessee, including claims, liabilities, and actions based upon nuisance or inverse condemnation. Upon demand, Lessee shall, at its own expense, defend Lessor, and its officers, employees, and agents against any and all such liabilities, claims, demands, actions, losses, damages, and costs. Lessor agrees to indemnify, protect, defend, and hold Lessee, and its officers, employees, and agents free and harmless from any and all liabilities, claims, demands, actions, losses, damages and costs, including all costs of defense thereof, caused by, arising out of, or in any way related to actions of Lessor (including employees and agents) on the Leased Premises during the term of this Lease or any time of occupancy of the Leased Premises by Lessee. Upon demand, Lessor shall, at its own expense, defend Lessee and its officer, employees, and agents against any and all such liabilities, claims, demands, actions, losses, damages, and costs.

B. In addition to and notwithstanding the previous paragraph, Lessee agrees that it shall be responsible for fuel, oil, or other spills and shall not dispose or discharge hazardous or other waste and shall be additionally responsible for any other of its negligent acts, and within the confines of the Lease Premises shall monitor such as is required by law and regulations of the state or federal government. Lessee agrees that Lessee shall indemnify, protect, defend, and hold Lessor and the officers, employees, agents, successors, and assigns harmless from and against any and all claims, demands, proceedings, causes of action, damages, liabilities, losses, costs, and expenses, including, without limitation, attorneys' and consultants' fees, costs, and expenses arising out of or resulting from any and all of the above, whether or not labeled environmental pollution and/or contamination of

soil or water; provided, however, that such indemnity shall not apply to actions on the Leased Premises by Lessor, its employees, or agents. The foregoing indemnity is intended to operate as an indemnity agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, defend, hold harmless, and indemnify Lessor from liability.

### **23. INSURANCE:**

As a separate and independent covenant from Lessee's indemnity obligations, Lessee shall file a Certificate of Insurance with the City Clerk evidencing that said owner or operator has in full force and effect a policy of public liability insurance combined with single limits of One-Million Dollars (\$1,000,000) for bodily injury, sickness and disease, including death resulting therefrom, and for property damage. Said policy shall include passenger liability coverage in an amount not less than Five-Hundred-Thousand Dollars (\$500,000) per passenger seat. Said policy is to be a comprehensive form covering, but not limited to, general liability, automobile liability, products liability (completed operations), contractual liabilities, and hangar keepers liability which shall be in an amount not less than the value of all aircraft under the fixed base operator's care, control, and custody.

All said policies and the certificates evidencing them shall provide for a minimum of thirty (30) days written notice to the City Clerk of Lessor in the event of cancellation or material change in the terms thereof. Prior to obtaining occupancy for any structure on the Leased Premises, Lessee shall provide Lessor with a copy of the endorsement to all required insurance policies naming the Lessor and its officers, employees, and agents as insureds under each policy. Failure to provide the endorsements is a material breach of this Lease and grounds for Lessor to deny occupancy of any structure on the Leased Premises to Lessee.

Lessee shall also maintain in full force and effect fire insurance on the improvements and fixtures installed by Lessee on the Leased Premises in an amount equal to the replacement cost of such improvements as determined by the Airport Manager.

**24. INSPECTION:**

The Lessor shall be permitted to enter and view the Leased Premises at any and all times for the purpose of inspecting or maintaining such Leased Premises and doing any and all things with reference thereto which the Lessor is obligated to do or which may be deemed necessary or desirable for the proper conduct and operation of the airport.

**25. DEFAULT AND TERMINATION PRIOR TO EXPIRATION:**

The Lessor shall have the right to terminate this Lease, in whole or in part, on the occurrence of any of the following events:

A. The failure to pay rent beyond thirty (30) days of the due for such rent payment.

B. Filing by or the final adjudication of Lessee of any petition in bankruptcy or the making of any transfer of general assignment for the benefit of creditors which has not been previously authorized by the Lessor.

C. The failure of the Lessee to perform substantially or keep or observe any of the terms, covenants, and conditions which it is obligated to perform, keep, or observe under this Lease after the expiration of a thirty (30) day period after the date of the Notice of Default is given by the Lessor to the Lessee to correct any such deficiency or default.

However, if the nature of Lessee's default is such that more than thirty (30) days are reasonably necessary to cure the default, then Lessee shall be provided reasonable additional time to cure the default if:

- (1) Lessee provides Lessor with a written plan containing a timeline of the various steps and/or actions to cure the default;
- (2) Lessee thereafter diligently pursues the cure; and,
- (3) Lessee does not miss any of the deadlines established within the timeline of the plan to cure the default.

D. Lessor shall not be responsible for the custodial protection of merchandise, fixtures, or equipment abandoned in the event the Leased Premises,

or any portion thereof, or discontinuance of the Lessee's business operations or required services, or any portion thereof is abandoned, even though it is necessary for Lessor to remove same from the Leased Premises for storage or disposal.

E. In the event of need for the Lease Premises by the Lessor for purposes of national defense.

**26. RIGHTS AFTER TERMINATION:**

In the event of termination for default or unsatisfactory performance by the Lessee, the Lessor shall have the right (unless otherwise specified in the termination notice), at once and without further notice to the Lessee, or surety, to enter and take possession of the Leased Premises occupied by the Lessee, by force or otherwise, and expel, oust, and remove any and all parties who may occupy any portion of the Leased Premises or airport covered by this Lease, and any and all goods and chattels belonging to the Lessee or the associates thereof which may be found in or upon same, without being liable for prosecution or to any claim for damages therefore. Upon such termination by the Lessor, all rights, powers, and privileges of the Lessee shall cease, and the Lessee shall immediately vacate any and all space occupied by Lessee under this Lease, and shall make no claims of any kind whatsoever against the Lessor, its agents or representatives, by reason of such termination, or any act incident thereto.

**27. TIME OF ESSENCE, BINDING UPON HEIRS, ETC.:**

Time is of the essence of each and all the terms and provisions of this Lease.

**28. ATTORNEY'S FEES:**

If either party brings any action or proceeding to enforce, protect, or establish any right or remedy under this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees. Judicial arbitration is an action or proceeding for the purpose of this provision.

**29. FEDERALLY MANDATED PROVISIONS:**

A. The Lessee, for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are

constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. The Lessee, for himself, his personal representatives, successors-in-interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(1) No person on the grounds of race, color, national origin, ancestry, disability, sex, or religion shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

(2) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, national origin, ancestry, disability, sex, or religion shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.

(3) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(4) That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter and repossess the Leased Premises and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

(5) Lessee shall furnish its accommodations and/or services on a fair, equal, and not unjustly discriminatory basis to all users thereof and it shall charge

fair, reasonable, and not unjustly discriminatory prices for each unit of service; PROVIDED, THAT the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

(6) Non-compliance with Subsection (4) above shall constitute a material breach thereof and in the event of such non-compliance the Lessor shall have the right to terminate this Lease and Lessee's interest therein without liability therefore or at the election of the Lessor or the United States either or both said Governments shall have the right to judicially enforce Provisions hereof.

(7) Lessee agrees that it shall insert the above five (5) provisions in any sublease agreement by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Leased Premises.

C. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, ancestry, disability, sex, or religion be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR, Subpart E, to the same effect.

D. The Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee and without interference or hindrance.

E. The Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.

F. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States, relative to the development, operation, or maintenance of the airport.

G. There is hereby reserved to the Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Lease Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Merced Regional Airport.

H. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

I. The Lessee, by accepting this Lease expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder that would create a hazard to aircraft or violate Part 77 airspace. In the event the aforesaid covenants are breached, the Lessor reserves the right to enter upon the Leased Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

J. The Lessee, by accepting this Lease, agrees for itself, its successors, and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from Yosemite Regional Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the Lease Premises and cause the abatement of such interference at the expense of the Lessee.

K. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

L. This Lease, and all the provisions hereof, shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of said airport or the



exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

M. Nothing in this Lease constitutes a waiver of any claim for compensation of Lessee in the event its peaceful enjoyment of the Lease Premises is interrupted by a material change in the use of the Airport, excepting that should an event provided for in subsection L occur, Lessee shall make no claim for compensation against Lessor or any officer or employee thereof.

### **30. GENERAL PROVISIONS:**

A. Any notices which either party may desire to give to the other party under this Lease must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To Lessor:                      City of Merced  
   Attn: City Clerk  
   678 West 18<sup>th</sup> Street  
   Merced, California 95340

Copy to:                         City Attorney  
   City of Merced  
   678 West 18<sup>th</sup> Street  
   Merced, California 95340

To Lessee:                       Hangar 42, LLC  
   1458 Estancia Dr.  
   Merced, CA 95340

B. **Integration:** This Lease contains the complete, final, entire, and fully integrated understanding and agreement between the parties hereto. All prior negotiations, understandings, writings, and oral agreements pertaining to the subject matter hereof are superseded by this Lease. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Lease. All prior discussions, negotiations, and understandings have been and are merged and integrated into, and are superseded by, this Lease.

C. Each Party is entering into this Lease based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such party deems material.

D. This Lease shall inure to the benefit of and shall be binding upon the Lessor and Lessee and their respective successors and assigns.

E. The Exhibits "A" through "B" referenced throughout this Lease are attached hereto and incorporated herein by this reference and made a part hereof.

F. This Lease may be amended only in writing, signed by the Lessor and Lessee.

G. This Lease has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel in the negotiation and drafting of this Lease. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Lease against the Party that drafted this Lease is of no application and is hereby expressly waived.

H. Lessor and Lessee understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties to this Lease and also govern the interpretation of this Lease without regard to any applicable conflicts of law, including all matters of construction, validity, and performance.

I. The parties agree that jurisdiction and venue for any legal challenge to the provisions of this Lease or the enforcement of the rights or obligations hereunder shall be brought in the Superior Court serving the County of Merced.

J. Failure of any Party to insist upon strict observance of, or compliance with, all of the terms of this Lease in one or more instances shall not be deemed a waiver of that Party's right to insist upon such observance or compliance with the other terms of the Lease. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Lease.

K. The Parties have each received independent legal advice from attorneys of their choice with respect to the advisability of executing this Lease. Prior to the execution of this Lease by each Party, each Party's attorneys have reviewed this Lease at length.

L. Lessor acknowledges and agrees that this Lease constitutes a legal, valid, and binding agreement of the Lessor enforceable against the Lessor in accordance with its terms. Lessee acknowledges and agrees that this Lease constitutes a legal, valid, and binding agreement of Lessee enforceable against Lessee in accordance with its terms.

M. Each Party acknowledges that, in entering into and performing under this Lease, it is acting as an independent entity and not as an agent of any of the other Parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures, or any other association of any kind or nature between Lessor and Lessee, jointly or severally.

N. This Lease is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Lease and no third party beneficiary is created hereby.

O. This Lease may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

P. The person or persons executing this Lease on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Lease on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Restatement Lease to be duly executed on the day and year first above written.

LESSOR:  
CITY OF MERCED  
A California Charter Law Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk


APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney      11/30/22  
Date

ACCOUNT DATA:

\_\_\_\_\_  
Verified by Finance Officer

LESSEE:  
HANGAR 42, LLC

BY: 

Taxpayer I.D. No. \_\_\_\_\_

Business License No. \_\_\_\_\_

ADDRESS: 1458 Estancia Dr.  
Merced, CA 95341

TELEPHONE: (209)316-2843

FAX NO: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

# EXHIBIT A

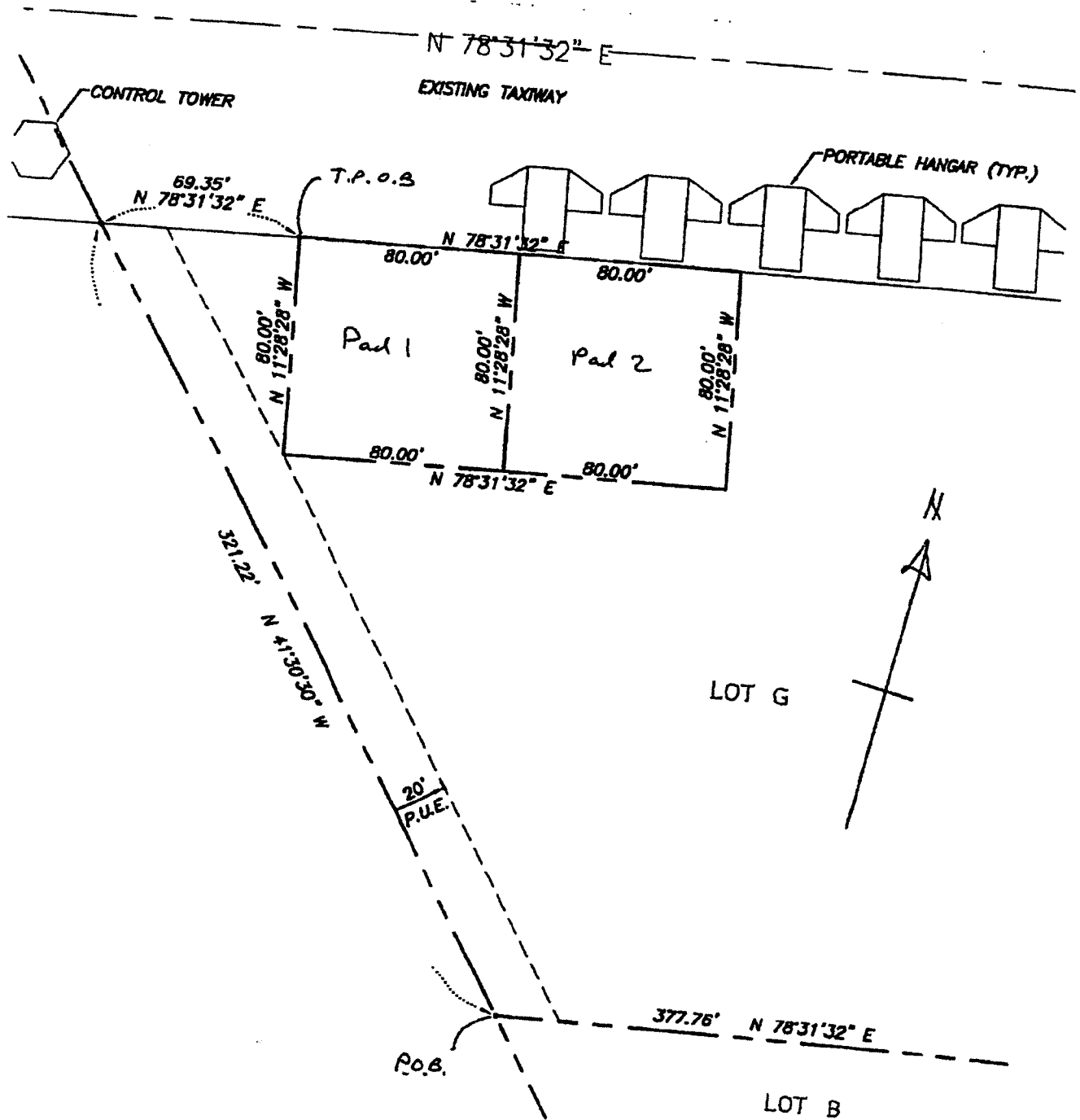


EXHIBIT B

Airport Pad #2

A portion of Lot G of Merced Airport Industrial Park Subdivision, as said subdivision is shown on map recorded in Volume 20 of Subdivision Maps at Pages 49 through 54, Merced County Records; said portion of Lot G being more particularly described as follows:

Commencing at a point that is the most northwesterly corner of Lot B of Merced Airport Industrial Park Subdivision; thence North  $41^{\circ} 30' 30''$  West, along the westerly line of Lot G, a distance of 320.00 feet; thence North  $78^{\circ} 31' 32''$  East, a distance of 149.35 feet; to a point that is the true point of beginning; thence the following courses and distances:

North  $78^{\circ} 31' 32''$  East, 80.00 feet;  
South  $11^{\circ} 28' 28''$  East, 80.00 feet;  
South  $78^{\circ} 31' 32''$  West, 80.00 feet;  
North  $11^{\circ} 28' 28''$  West, 80.00 feet, to the true point of beginning.

Said area containing 6,400 square feet.

# EXHIBIT C

PROJECT: NEW AIRPORT  
 MENDED MUNICIPAL  
 AIRPORT

CORPORATE JET HANGAR  
 LAYOUTS

CONDOR DRIVE

Lessee is not responsible for costs of City or other permits for the construction of the water line indicated on this Exhibit.

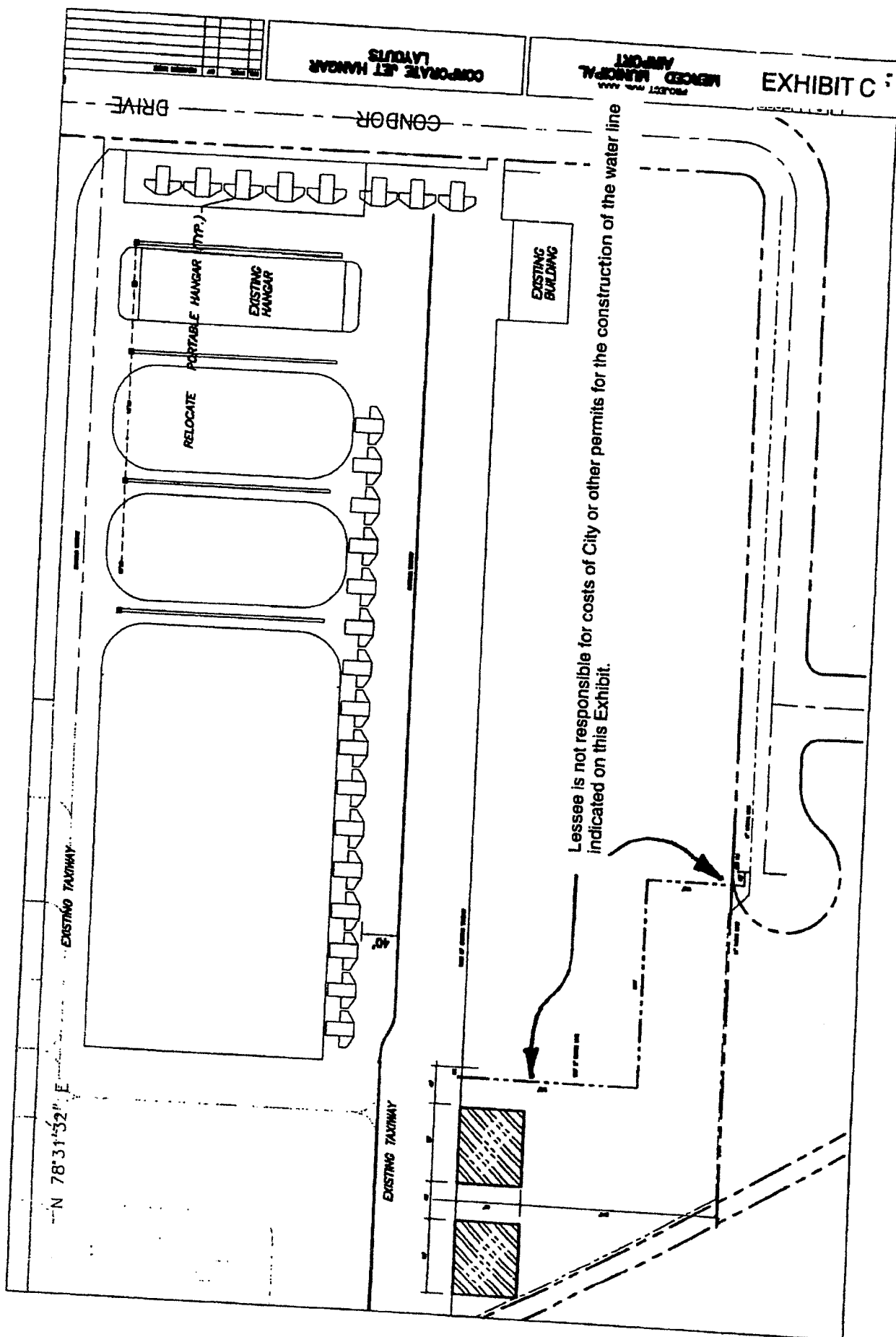
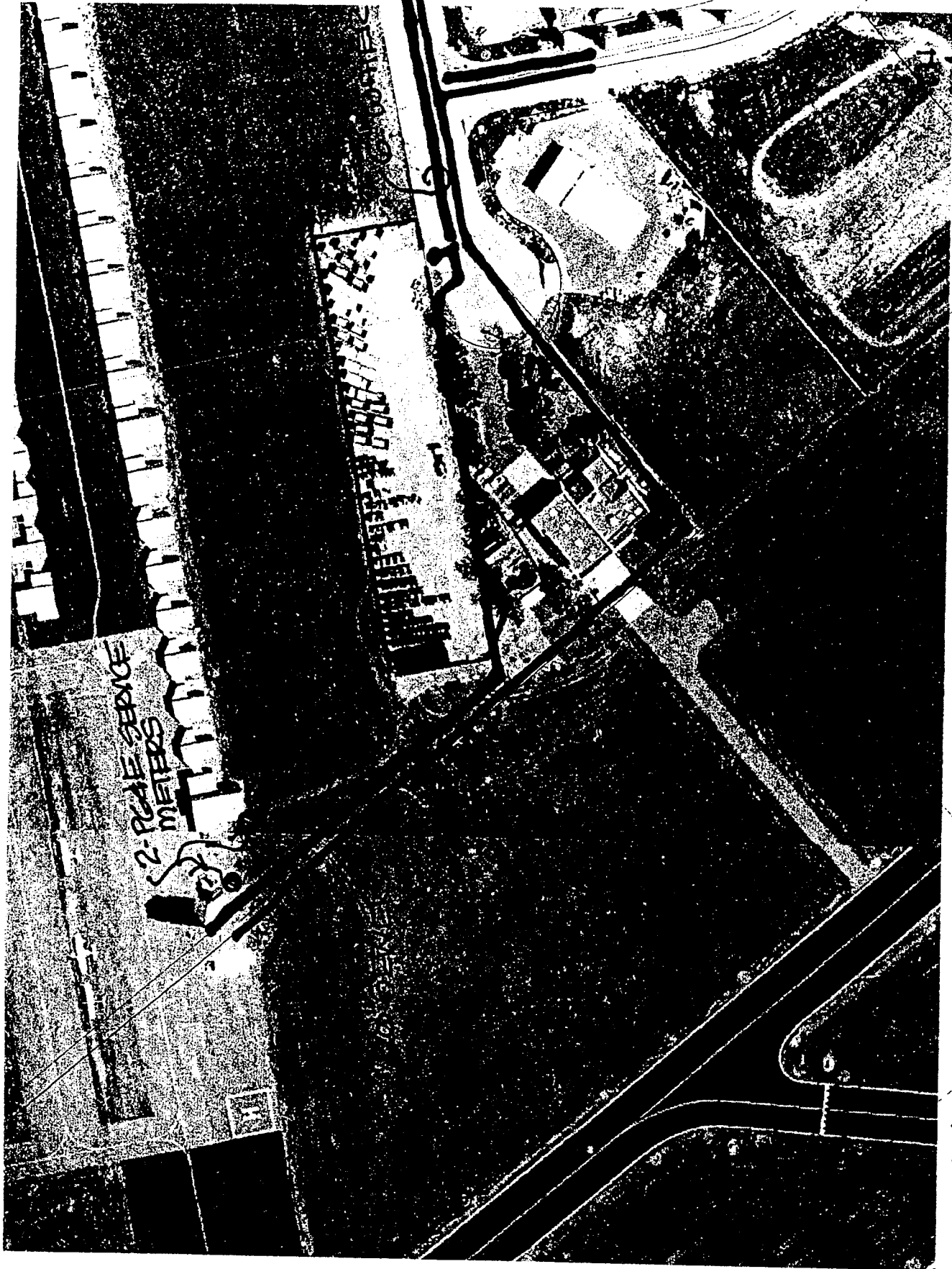




EXHIBIT C



MERCED AIRPORT

NTS