

RESOLUTION 2013 - 49



**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON,  
APPROVING AIRPORT LEASE WITH  
TYLER & KRISTINE SCHILPEROORT**

**WHEREAS**, the City of Sunnyside owns, operates and maintains a municipal airport, and is empowered to enter into ground leases with individuals to accommodate and facility municipal airport purposes; and

**WHEREAS**, Tyler and Kristine Schilperoort desire to enter into a Lease Agreement for Hangar Area 2, to operate such hangar in conformity with Municipal Airport uses and purposes; and

**WHEREAS**, the City Council finds and determines that it is appropriate to enter into a Lease Agreement with Tyler and Kristine Schilperoort; and

**WHEREAS**, the City Council finds and determines that approval of said Lease Agreement between Tyler and Kristine Schilperoort and the City of Sunnyside is in the best interest of residents of the City of Sunnyside.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

**SECTION 1.** That the Lease Agreement for Municipal Airport Hangar No. 2, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside and Tyler and Kristine Schilperoort, is hereby approved.

**SECTION 2.** That the Interim City Manager is hereby authorized to execute this Lease Agreement approved herein, for and on behalf of the City of Sunnyside.

**SECTION 3.** This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

**PASSED** this 24<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

**ATTEST:**

  
\_\_\_\_\_  
DELILAH SAENZ, CMC, CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
KERR LAW GROUP, LLP  
Attorneys for the City of Sunnyside

EXHIBIT "A"

**FILED FOR RECORD AT REQUEST OF:**

City of Sunnyside, Washington

**WHEN RECORDED RETURN TO:**

City of Sunnyside, Washington  
818 East Edison Avenue  
Sunnyside WA 98944

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**CITY OF SUNNYSIDE LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF SUNNYSIDE, WASHINGTON, a Municipal Corporation, hereinafter referred to as "City", and TYLER SCHILPEROORT and KRISTINE SCHILPEROORT, husband and wife, hereinafter referred to as "Lessee."

**IN CONSIDERATION** of the mutual covenants contained herein and other valuable consideration, it is agreed as follow:

1. **Premises.** City does hereby lease to Lessee upon the following terms and conditions that property known as Sunnyside Airport Area 2, Yakima County APN 231029-24905, beginning at the Southeast corner of the North half of the Southwest quarter of the Northwest quarter of Section 29, Township 10 North, Range 23 East, W.M.; thence East 128.42 feet and South 49.73 feet to the true point of beginning; thence East 89.78 feet; thence South 121.27 feet; thence West 89.78 feet; thence North 121.27 feet to the true point of beginning as that property is depicted and labeled as #2 on the aerial picture marked Exhibit "A" attached hereto and by this reference incorporated herein, hereinafter referred to as the "Premises", together with the right of ingress to and egress from the Premises and the public use areas/facilities used in connection therewith, over designated Sunnyside Airport property and roadways, subject to rules and regulations governing the use of the Sunnyside Airport and as the same may be promulgated by the City from time to time.

2. **Term.** The initial term of this Lease shall be forty (40) years commencing retroactively from January 1, 2013, and continuing until December 31, 2052. Lessee may extend the Lease term for five (5) additional five (5) year terms, each to be exercised at Lessee's option for a maximum additional term of twenty-five (25) years. Any optional term shall be exercised by Lessee in writing at least one hundred eighty (180) days prior to the expiration of the then current term.

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3. **Rent.** Lessee shall pay to City a total annual rent of Four Hundred Forty-two Dollars and Sixty Cents (\$442.60) per year due on or before January 15<sup>th</sup> of each year. Additionally, Lessee shall be responsible for applicable leasehold excise taxes as more particularly described in Section 4 below. All utilities serving the Premises shall be paid by the Lessee.

The annual rent shall increase every five (5) years during the initial term and any optional term of this Lease, pursuant to the CPI West B/C (cities under 1.5 million) - All Urban Consumers. The first annual rent increase shall be applied for 2018. The maximum increase is 15% over any five (5) year period.

4. **Tax.** Lessee shall be responsible for applicable leasehold excise tax due pursuant to RCW 82.29A to the City on or before the 15<sup>th</sup> day of January during each year of this Agreement, or at such other regular periods as may be required due to State reporting requirements. If the State of Washington changes the leasehold excise tax or an additional tax is imposed on such leasehold, the tax payable by the Lessee shall be correspondingly changed. Any initial taxes due shall be due upon execution of this Lease Agreement.

Lessee shall be responsible to pay any property taxes assessed for the buildings and other improvements constituting the Premises.

5. **Use.** Lessee shall use the Premises for the following purposes and no others without the prior written consent of the City: 1) aircraft hangars for storage and maintenance of aircraft, 2) operation of other aviation related businesses, 3) automobile, boat, motorcycle, snowmobile or other motorized vehicle storage, provided such use is subordinate to the storage of aircraft.

Prior to exercise of said use, Lessee shall still be required to obtain all applicable licenses and permits as may be required by local, State, or Federal law, including, but not limited to Title 14 RCW.

No other uses, activities, or operations shall be conducted by the Lessee upon the leased Premises without first obtaining the prior written consent of the City.

Lessee shall maintain the Premises in clean and sanitary conditions, free of fire or other casualty hazards. The Lessee shall be solely responsible for the security, maintenance, and protection of its property stored at the Premises.

6. **Insurance.** Lessee shall obtain and maintain general commercial liability insurance coverage with \$2,000,000 minimum bodily injury and personal injury coverage; and \$1,000,000 minimum property damage coverage limits on a per-occurrence basis. The Lessee shall provide the City with certificates of insurance coverage naming the City as an additional insured.

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Lessee shall be solely responsible for the loss, damage, or casualty to its personal property located on the Premises, regardless of cause.

At the end of the initial 40-year term, effective for any additional term within the 25-year option period, these insurance requirements shall increase in dollar amount as mutually agreed by the parties.

7. **Indemnity and Hold Harmless.** Lessee agrees to indemnify and hold the City harmless as provided herein to the maximum extent possible under the law. Accordingly, the Lessee agrees for itself, successors and assigns, to defend, indemnify and hold harmless the City, its appointed and elected officials, and employees from and against liability for all claims, damages, suits, and judgment including the costs of defense thereof, for injury to person, death, or property damage which is caused by, arises out of, or is incident to the Lessee's exercise of its rights and privileges as granted by this Lease Agreement, except to the extent of the City's sole negligence.

8. **Assignment or Sublet.** Lessee shall not assign or transfer this Agreement or any interest therein, nor sublet the whole or any part of the Premises, nor grant an option for assignment, transfer or sublease for the whole or any part of the Premises, nor shall this Agreement or any interest therein be assignable or transferable by operation of law, or by any process or proceeding of any Court or otherwise without the prior written consent of the City, which consent shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed. Any transfer of less than fifty percent (50%) of the membership interests in and to the Lessee as part of a single transaction shall not be considered an assignment or transfer of this Lease Agreement.

9. **Environmental Requirements.** Lessee represents, warrants, and agrees that it will conduct its activities on and off the Premises in compliance with all applicable environmental laws. As used in this Lease, Environmental Laws means all Federal, State, and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Clean Air Act, 42 U.S.C. § 7401, et. seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et. seq., The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S. C. § 9601, et. seq., The Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, City, County or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

Lessee represents and warrants to the City that hazardous substances shall not be illegally generated, stored, or disposed of on the Premises nor shall they be illegally transported to or over the Premises. "Hazardous substances" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic

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waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local environmental law, regulation, or rule presently in effect or promulgated in the future. Lessee agrees that it will be responsible for all damages and costs associated with release of any such substances upon the Premises occurring during the term of this Lease Agreement, including any cleanup costs. The provisions of this section shall survive the termination of this Lease.

**10. Notices.** Notices to the City of Sunnyside shall be sent to the following address:

City of Sunnyside  
818 East Edison Avenue  
Sunnyside WA 98944

Notices to the Lessee shall be sent to the following address:

Tyler & Kristine Schilperoort  
5061 E. Edison Avenue  
Sunnyside, WA 98944

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U. S. mails, with proper postage and properly addressed.

**11. Dispute Resolution.** For the purpose of this Agreement, time is of the essence. In the event of a dispute regarding the enforcement, breach, default or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the Parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, and the Mandatory Arbitration Rules (MAR), or in the event of substantial change in law according to the then existing commercial reasonable standards for conduct of arbitrations; venue shall be placed in Yakima County, Washington, the laws of the State of Washington shall apply; and the prevailing party shall be entitled to its reasonable attorney fees and costs. The City retains the right to seek an unlawful detainer action or other legal action as may be necessary to regain possession of the property.

**12. Lien Waiver.** Lessee shall have the right to mortgage its buildings and/or other improvements located on the Premises. In order to facilitate Lessee's ability to mortgage its buildings and/or other improvements, the City will acknowledge it has no interest in the improvements and the City will waive its right to statutory liens or common law rights to distress with regard to any of Lessee's improvements. The City agrees to execute a release and consent form as reasonably requested by Lessee's lender.

**13. Ownership.** All improvements on the Premises are the property of the Lessee. At least 180 days before the expiration of the Lease, the Lessee shall give the

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City written notice of its intentions, which may be selected at the Lessee's option. These options include:

A. Negotiate a new land lease with the City or sell the improvements to the City at fair market value.

(1) If a new lease is not negotiated by the expiration of the Lease, then the City shall purchase the improvements at fair market value.

(2) If the City is to purchase the improvements at fair market value, then the parties shall have sixty (60) days after the expiration of the Lease to agree upon the fair market value. If the fair market value is not agreed upon within said sixty (60) days, then the fair market value shall be determined by appraisal. The parties shall agree upon an appraiser, and if they cannot, then each party shall select an appraiser, and the two selected appraisers shall select an independent appraiser. The independent appraiser shall determine the fair market value. There shall be no discount applied to the fair market value because the land lease has expired or will expire. Lessee shall bear the costs of all appraisal services.

B. Revert all or some of the improvements to the City at no cost to the City. The reversion to the City shall be effective upon the expiration of the Lease. Lessee may choose which improvements to revert and which improvements to remove.

C. Remove all or some of the improvements. Lessee shall have 180 days after the expiration of the Lease to complete said removal. Lessee may choose which improvements to remove and which improvements to revert.

**14. Waiver.** Failure of the City to enforce any provision of this Lease shall not constitute waiver of that provision, and all provisions may be enforced at any time and in the sole discretion of the City regardless of historical practice or course of conduct.

**15. Entire Agreement.** This Agreement contains the entire agreement between the Parties, and no modification of this Agreement shall be binding upon the Parties unless evidenced by an agreement in writing signed by the City and the Lessee after the date hereof. This Agreement supersedes any prior written or verbal agreement of the parties.





EXHIBIT "A"

Yakima County GIS - Washington  
Land Information Portal

[Print Map]  
[Close Map]

[Yakimap.com](http://Yakimap.com)



- 1. Thonstad
- 2. Schulperport
- 4. Sunnyside Airport Properties (Durfey)
- 5. Sunnyside Airport Properties (Durfey)
- 6. Webb
- 7. Sierra 5 Hangar, LLC
- 8. Sunnyside Airport Hangar, LLC



Map Center: Range:23 Township:10 Section:29

2011 Ortho Photography

 City Limits  
 Sections

[WWW.YAKIMAP.COM](http://WWW.YAKIMAP.COM)

Yakima County GIS  
 128 N 2nd Street  
 Yakima, WA 98901  
 (509)574-2992



One Inch = 300 Feet  
 Feet 200 400

MAP AND PARCEL DATA ARE BELIEVED TO BE ACCURATE, BUT ACCURACY IS NOT GUARANTEED; THIS IS NOT A LEGAL DOCUMENT AND SHOULD NOT BE SUBSTITUTED FOR A TITLE SEARCH, APPRAISAL, SURVEY, FLOODPLAIN OR ZONING VERIFICATION

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