

# **RESOLUTION No. 06-419**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

### **RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A GROUND LEASE WITH PACIFIC LAND ENTERPRISES INC. FOR A LIGHT INDUSTRIAL/MANUFACTURING DEVELOPMENT ON A PORTION OF LOT 5 AT THE NEVADA COUNTY AIRPORT**

**WHEREAS**, the Nevada County Board of Supervisors finds and declares:

A. Specifications and requirements were prepared and distributed for a non-aviation light industrial/manufacturing development on a portion of Lot 5 at the Nevada County Airport; and,

B. Sealed proposals for the development were opened on June 17, 2005, with the most responsive proposal being from Pacific Land Enterprises, Inc, such that the Nevada County Airport Commission has endorsed this project; and,

C. On April 11, 2006, the Board of Supervisors approved Resolution No. 06-160 authorizing execution of a ground lease for portions of Lot 5 with Pacific Land Enterprises, Inc. ("Lessee"); and,

D. The Lessee was unable to complete its due diligence within the time required by the ground lease, thereby nullifying and terminating the lease; and,

E. The County and Lessee have conferred and now desire to execute a new ground lease similar to the one authorized by Resolution No. 06-160, but with new dates for completion of due diligence, document submittal and commencement of rent payments; and,

F. The Board finds that the public interest is best served by this Resolution, and that it is in the County Airport's best interest to enter into the lease attached as Exhibit A to this Resolution,

NOW, THEREFORE, BE IT RESOLVED by the Nevada County Board of Supervisors as follows:

1. Pacific Land Enterprises, Inc. is selected as the party with which the County will enter a ground lease for construction and management of a light industrial/manufacturing building, and related developments, on a portion of Lot 5 (1.65 acres) at the Nevada County Airport; and,
2. The Ground Lease in the form attached here as Exhibit A is approved and the Chair of the Board is hereby authorized to execute it; and,
3. Prior Resolution No. 06-160 is repealed and replaced by this Resolution.
4. When received, funds will be deposited in 4116910042741000/430200.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board. held on the 22nd day of August, 2006,  
by the following vote of said Board:

Ayes: Supervisors Nate Beason, Sue Horne, John Spencer,  
Robin Sutherland & Ted S. Owens.  
Noes: None.

ATTEST:

Absent: None.

CATHY R. THOMPSON  
Clerk of the Board of Supervisors

Abstain: None.

By: Cathy R. Thompson

Nathan H. Beason, Chair

DATE	COPIES SENT TO
8/23/06	A-C* (Hold for Insurance)
9/26/06	Airport Mngr
	Pacific Land
	A-C*
	GS*

## GROUND LEASE

Description: A Portion of Lot 5 at the Nevada County Airport ("Property")

County: County of Nevada ("County")

Lessee: Pacific Land Enterprises, Inc. ("Lessee")

Date: August 22, 2006

This Ground Lease for 1.65 acres ("Lease") is entered by and between the County and the Lessee (collectively, the "Parties") for the Property.

RECITALS: The Parties agree and acknowledge the background facts and the accuracy thereof as follows:

A. The Property is comprised of a portion (1.65 acres) of Lot 5 fronting on Loma Rica Drive, Grass Valley, California. Lot 5 is part of the Nevada County Airport (hereinafter "Airport"). The Airport Terminal Building is located at 13083 John Bauer Avenue, Grass Valley, CA 95945. Not all of the 1.65 acres may be of use to Lessee, but the useful portion is being established by Lessee's due diligence.

B. A site description of the Property has been prepared by the County, and is set forth in the file of the County's Planning Department in connection with the General Plan Land Use Map Amendment changing 1.65 acres from a public designation to an industrial designation [Board Resolution No. 06-146, adopted March 28, 2006]. Exhibit A of this Lease is a GIS map of the site.

C. The County issued a Request For Proposals ("RFP") for a ground lease of the Property dated May 5, 2005 (hereinafter, the "Proposal"). Based on Lessee's proposal Lessee was selected by the County as the most responsive to the RFP and the most advantageous response to the RFP. That proposal is incorporated here by reference in its entirety. Following negotiations over the terms of a lease, the Parties now seek to enter into this Lease.

D. Lessee is a corporation duly formed under the laws of the State of California and is in good standing. Lessee is lawfully engaged in business in Grass Valley, Nevada County, California. Lessee's primary business is real estate services. Lessee's officers have the requisite legal authority to enter into this Lease in accordance with the Lessee's Bylaws.

NOW, THEREFORE, THE PARTIES AGREE ON THE TERMS AND CONDITIONS AS FOLLOWS:

1. GRANT OF LEASE: The County hereby leases the Property in its entirety to Lessee subject to the terms and conditions of this Lease.

2. USE OF THE PROPERTY: The Lessee shall use the Property exclusively for light industrial/manufacturing use as more fully permitted under County M-1 zoning adopted April 27, 2006 by Ordinance No. 2201. . No change in the use shall be authorized except pursuant to an amendment of this Lease. Use of the Property by the Lessee or any sub-lessee shall at all times be in compliance with all federal, state, and local laws and regulations, now in effect or hereafter promulgated, including any licensing or permit requirements.

"Improvements" shall be constructed and maintained by Lessee, including but not limited to buildings, sheds, fences, pavements, drainages and any other works or structures needed for light industrial use. .

"Project" shall mean the Lessee's arrangements and actions necessary to legally permit construction, undertake construction and thereafter maintain and repair such Improvements as are needed by Lessee.

3. INSPECTION OF THE PROPERTY: The County shall have the right of access to enter the Property, including buildings, for the purpose of inspection and verification of compliance with this Lease and all laws upon reasonable notice to the Lessee and reasonable accommodation of the Lessee and any sub-lessees.

4. TERM OF LEASE: The lease shall commence on August 22, 2006 and shall run for 40 (forty) consecutive years, ending on August 22, 2046, (the "Term") unless terminated earlier in accordance with the terms of the Lease.

5. LEASE RENEWAL Upon mutual agreement of County and Lessee, the term of this lease may be extended for a period of ten years. The Base Rent shall continue adjustments in accordance with Section 9 and 10 of the Lease.

6. RIGHT OF FIRST REFUSAL. If, during the course of the Lease, or any extension thereof, County, , transferees and assignees elects to sell the Property that is the subject of this Lease, County,, transferees and assignees shall not sell or agree to sell the Property without offering the Property to Lessee. The word sell shall include any transfer, conveyance, assignment, or lease of all or any portion of the Property or County's interest in the Property. The County's obligation under this section 6 shall be discharged if state law does not allow the County to honor the Lessee's first right of refusal.

Before County sells or agrees to sell the Property, County shall offer to sell the Property to Lessee, in writing and on terms and conditions substantially identical to those proposed in the sale of the Property to a third party. The offer shall include the purchase price proposed for the sale to the third party, the method of purchase price payment, the amount and terms of any County financing in connection with the proposed purchase, the amount of any earnest money deposit, the time and location for the close of escrow, the name of the proposed

purchaser and any other material terms and conditions for the proposed sale of the property.

Lessee shall have ten (10) days from the date of any such offer to accept the offer by delivering to County the acceptance on or before 5:00 p.m. of the 10<sup>th</sup> day following Lessee's receipt of notice of the offer by a third person.

If Lessee fails to accept the offer on or before the last day of the acceptance, the offer shall be deemed to be rejected.

Lessee's failure to exercise his right of first refusal as to any offer shall not extinguish the right of first refusal, which shall apply to any subsequent offers from third parties.

Lessee's right of first refusal shall begin with the date of this Lease and shall continue in effect throughout its term and any extensions thereof.

This right of first refusal shall inure to the benefit of and be binding on the parties and their respective successors.

Lessee shall cooperate with County, and County shall cooperate with Lessee in the event either desire to enter into an Internal Revenue Code, section 1031 tax-deferred exchange. Any such 1031 exchange shall not extend the escrow closing date, nor shall it cost the other party any additional sums or submit that party to any additional liability.

Lessees' ability to exercise this right of first refusal shall be invalid if, at the time of Lessee's right of first refusal, Lessee is in substantial and material default of any of the Lease terms. In the event Lessee declines to exercise its right of first refusal, the remaining Lease provisions shall remain in full force and effect.

7. DEFINITION OF RENT: The term "rent" shall include any reference to "Base Rent" as defined in Section 8 herein, "Inflated Base Rent" as defined in Section 9 herein, and "Base Rent Adjusted" as defined in Section 10 herein.

8. BASE RENT: The Base Rent shall be two thousand six hundred and 00/100 dollars (\$2,600.00) per month until re-evaluated in accordance with Section 10 herein.

9. INFLATED BASE RENT: An inflationary increase shall be made to the Base Rent after the first 12 months of rent payment, and each twelve month period thereafter throughout the Term except in years 6, 11, 16, 21, 26, 31, and 36 (when the Initial Base Rent is adjusted as set forth in Section 8 herein). The inflationary increase shall be equal to the inflationary increase shown in the Consumer Price Index, All Urban Consumers, San Francisco CMSA, All Items for the closest 12 month period for which figures are available, for the Grass Valley

general vicinity or same or similar locations, but shall not exceed 4% of the Base Rent annually on a non-compounded basis.

10. BASE RENT ADJUSTMENT: After the conclusion of each five year period of rent payment, the base rent shall be re-evaluated and adjusted (increased or decreased) based upon prevailing rates for light industrial ground leases at other general aviation airports of similar size and location such as Auburn, Lincoln and Marysville. Thereafter the Base Rent, as adjusted, shall be the Base Rent subject to the inflationary increase during the subsequent four-year period as required by Section 9 herein.

11. PAYMENT OF RENT: The Base Rent or Inflated Base Rent shall be due and payable monthly, in advance, on the first day of each month throughout the Term and any extension thereof. Rent shall be pro-rated if rent applies to a fraction of a month. Rent shall be delinquent if not received by the County by the 10<sup>th</sup> day after the due date, and on the 11<sup>th</sup> day an automatic late charge shall be imposed in an amount equal to 10% of the rent then due.

12. RENT COMMENCEMENT: Payment of rent will commence September 1, 2007 (eight months after issuance of the building permit) or issuance of Certificate of Occupancy for the Improvements to the Property, whichever occurs first. The September 1, 2007 commencement of rent payment date is contingent on lessee application for planning approval on or before September 1, 2006 with an 80 day County review and approval and lessee application for building permits on or before November 1, 2006 with a 60 day County review and approval. Any delay in the County review and approval times listed above will result in a day for day delay in the commencement of rental payment. Delays in planning or building permit document submittal by the lessee will not result in any delay in the commencement of rental payments.

13. RENTAL VALUE DISPUTE RESOLUTION: If the Parties are unable to agree on an adjustment to rent as contemplated within Section 10 herein, the Parties agree to select and appoint a licensed real estate appraiser (the "Appraiser") who is generally familiar with Grass Valley and the airports referred to in Section 10. The Appraiser shall determine the market lease rate for ground leases as contemplated within Section 10 herein and based upon such determination, shall establish the amount of adjustment to the Base Rent. The determination of the Appraiser shall be final and binding on the Parties. The Parties shall bear equally the cost in retaining the Appraiser.

14. SUB-LEASE: Lessee may, in its sole discretion, sub-lease space within any portion or all of the Property. Any sub-lease must comply with all terms and conditions of this Lease, except those involving rent. Any sub-lessee shall carry general liability insurance for this sub-leased portion of the Property to the full extent required by this Lease.

15. ASSIGNMENT: Lessee may not assign this Lease without having first obtained the written consent of the County, which shall not be unreasonably withheld. The Lessee and/or proposed assignee shall disclose promptly to the County the creditworthiness and financial strength of the proposed assignee, including but not limited to its relevant background and experience in leasing.

16. LESSEE IMPROVEMENTS – CONSTRUCTION AND REVERSION: At Lessee's sole cost and responsibility, the Lessee shall construct any buildings or other improvements (the "Improvements") in compliance with all applicable federal, state, and local codes and regulations, including all required tests and technical studies. The rent under this Lease shall not be affected by the construction of the Improvements. Any toxics or contaminants brought onto the Property during or after construction of Improvements shall be removed and/or remediated as soon as discovered at Lessee's sole expense. Lessee shall comply with: (1) all requirements related to the Airport Layout Plan (2005), the Airport Facilities requirements related to the Airport Master Plan (1981 amended in 1992, 1997 and 2003), as they currently exist or are hereafter amended; and (2) all FAA assurances. The Improvements shall not be removed or damaged upon termination of the Lease. Upon termination of the Lease, ownership of the Improvements shall transfer to the County.

17. TAXES: Lessee shall be responsible for any and all taxes applicable to the Property during the Term. Pursuant to Revenue and Taxation Code section 107.6, Lessee is hereby notified of its responsibility for possessory interest taxes arising out of this Lease of public airport real property.

18. UTILITIES: Lessee shall be solely responsible for arranging for and paying for any utilities serving the Property.


19. MAINTENANCE AND REPAIRS: Except as otherwise provided for herein, Lessee shall be solely responsible for any and all reasonable maintenance and repairs of any Improvements made to the Property by Lessee for the duration of the Lease. At the termination of the lease period, Lessee's improvements will be in good condition and repair.

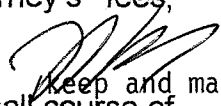
20. WARRANTIES AND REPRESENTATIONS OF COUNTY: The County makes the following warranties and representations to the Lessee regarding the Property:

- a. The condition of the Property is not in violation of any local, state, or federal law.
- b. There are no toxic or other hazardous materials located on the Property.

- c. The Property has been defined by a survey and the dimensions and location of the boundaries of the Property have been identified and marked and that the Lessee may rely upon such boundary markers for development and construction of the Improvements on the Property.
  - d. There are no liens or encumbrances on the Property other than those disclosed in a preliminary title report provided by the County as of the commencement date of this Lease.
  - e. The County will cooperate with Lessee in providing appropriate subordination agreements as may be required or reasonably necessary for Lessee to acquire construction and permanent financing for the construction of the Improvements to the Property.
  - f. The County agrees to indemnify, defend and hold Lessee harmless from any and all claims, damages, actions, suits of any kind arising out of a breach of any of the warranties and representations set forth in this Section 20.
  - g. The County agrees to record with the Nevada County Recorder's Office a summary notice of this Lease or other document reasonably requested by Lessee.
  - h. County warrants there are no liens, judgments, or impediments of title on the subject Property or affecting Lessee's interest in the same, and there are no covenants, easements or restrictions that prevent the use of the Property as contemplated herein by Lessee.
21. LESSEE INSURANCE: Lessee shall carry and maintain, during the entire term hereof, at Lessee's sole cost and expense, the following types of insurance, in the amounts and with the endorsements as herein specified:
- a. General Liability Insurance: Broad form comprehensive general liability insurance with combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence insuring against any and all liability of Lessee with respect to the Property, or grounds, or arising out of maintenance, use or occupancy thereof, naming County as an additional insured, and providing 10 days written notice to County of any cancellation or change in coverage protection. Lessee's insurance coverage shall be primary insurance as respects the County, its officers, officials employees or volunteers shall be excess of Lessee's insurance and shall not contribute with it.
  - b. Fire Insurance (Contents): Fire Insurance with all risk type standard form extended coverage endorsement, for the full insurable value of Lessee's fixtures, which may from time to time be located upon Property, and the



fixtures of others which are in Lessee's possession and which are located on the Property, and providing for thirty (30) days written notice to County of any termination or change in coverage (except ten (10) days notice shall be required for non-payment of premium. The proceeds from any such policy shall be used for the repair or replacement of such fixtures. County shall have no interest in the insurance on Lessee's or others' fixtures, equipment and merchandise and will sign all documents necessary or proper in connection with the settlement of any claims or loss by Lessee or others. Lessee shall be solely liable for its fixtures, equipment and merchandise and all of the contents located on the Property, and further understands and agrees that County will not carry personal property insurance to cover same. ~~Lessee's insurance~~ 

- c. Property Insurance (Structures): Property insurance with all risk type standard form extended coverage endorsement, for the full insurable value of Lessee's structure and all other related improvements located on the Property, including vandalism and malicious mischief endorsements. The proceeds from any such policy shall be issued by Lessee for the repair and replacement of the Property. Lessee shall cooperate with County to maximum extent possible to assure said proceeds are so utilized. In relation to the foregoing insurance, Lessee shall furnish proper endorsements thereto (i) evidencing the aforesaid coverages, (ii) naming the County as loss payee, and (iii) providing for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice shall be required for non-payment of premium).
- d. Waiver of Subrogation. Lessee and County agree that insurance carried or required to be carried by either of them against loss or damage to property by fire, flood, earthquake, acts of terrorism, acts of war or other casualty shall contain a clause whereby the insurer waives it's rights to subrogation against the other party, it's elected officials, directors, employees, volunteers and agents and each party shall indemnify the other against any loss or expense, including reasonable attorney's fees, resulting from the failure to obtain such a waiver. 
- e. Course of Construction (Builder's Risk) Insurance. Lessee shall <sup>keep and maintain</sup> course of construction insurance covering all risks of loss, less policy exclusions, for the completed value of the project with no coinsurance penalty provisions. Lessee shall waive all rights to subrogation against County.
- f. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by County.
- g. Insurance Company Ratings. At all times, Lessee shall keep and maintain in full force and effect, throughout the Term of this Lease, policies of

insurance required by this Lease, which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+, or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6,7,8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County Risk Manager.

- h. Ability to Utilize Blanket Policy. Lessee's obligation to insure under the foregoing provision, may be provided by appropriate amendment, rider, or endorsement on any blanket policy or policies carried by Lessee.
- i. Failure to Provide and Maintain Insurance. Failure by the Lessee to provide and maintain the insurance policies (including Best's ratings) required by this Lease shall constitute, and for all purposes be, a default hereunder and a material breach hereof, and shall be cause for termination of this Lease and forfeiture of all right, title and interest hereunder or otherwise, if not cured within thirty (30) days of written notice thereof to Lessee.

22. COUNTY INSURANCE: County shall carry and maintain, during the term hereof, at County's sole cost and expense, broad form comprehensive general liability insurance with combined single limits of not less than One Million Dollars (\$1,000,000), insuring against any and all liability of County with respect to the Property or arising out of the use and enjoyment thereof, and upon request shall furnish to Lessee a certificate of insurance evidencing the aforesaid coverage.

23. SELF INSURANCE . At the option of the County the County may provide the required limits of liability insurance under a program of self-insurance.

24. INDEMNITY: Nothing herein shall be construed as a limitation of Lessee's liability, and Lessee shall indemnify, defend and hold County harmless for any and all liabilities, claims, demands, damages, losses and expense which County may incur by reason of willful misconduct, or negligent actions or omissions of Lessee, or the agents, servants, and employees of Lessee, or which may arise out of the use, occupation, and enjoyment of the site Property by Lessee or the agents, servants, and employees of Lessee, or by any person or entity holding under Lessee, or by any or Lessee's invitees or agents.

25. INDEMNIFICATION OF LESSEE: Nothing herein shall be construed as a limitation of County's liability, and County shall indemnify, defend and hold Lessee harmless for any and all liabilities, claims, demands, damages, losses and expense which Lessee may incur by reason of willful misconduct, or negligent actions or omissions of County, or the agents, servants, and employees of County.

26. DEFAULT: The Parties hereto agree that the unlawful detainer provisions of the California Civil Code and the California Code of Procedure apply. The

occurrence of any one or more of the following events is a default hereunder and constitutes a material breach of this Lease by Lessee.

- a. The abandonment of the Lease by Lessee.
- b. The failure by Lessee to make any payment of the Rent required to be made by Lessee hereunder, as and when due, where the failure continues for a period of thirty (30) days after notice thereof from County to Lessee.
- c. The failure by Lessee to promptly commence, diligently pursue to completion the construction of the Improvements, and cause to be filed a notice of completion.
- d. The failure by Lessee to carry and maintain, or to require each Sub-Lessee to carry and maintain, any policy of insurance as required hereunder.
- e. The failure by Lessee to make any other payment as required hereunder, as and when due, where the failure continues for a period of thirty (30) days after notice thereof from County or Lessee.
- f. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where the failure continues for a period of thirty (30) days after written notice thereof from County to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are responsibly required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.
- g. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where such failure may not be cure.
- h. In the event of any such default or other material breach of this Lease by Lessee, County may, after giving such notice as provided above, or if not provided, as required by law, pursue those remedies set forth in Civil Codes Sections 1951.2 and/or 1957.4, and by this reference is made part of the Lease.
- i. County's waiver of a default shall not be deemed a waiver of any term, condition, or covenant hereunder, and shall not be deemed a waiver of County's right to enforce any remedy upon any future default.

27. Default By County. County shall not be in default unless County fails to perform obligations required of it within a reasonable time, but in no event later

than thirty (30) days after written notice of the nature of the problem and request to cure by Lessee to County; provided that if the nature of County's obligation is such that more than thirty (30) days are reasonably required for performance, then County shall not be in default if County commences performance within thirty (30) days and thereafter diligently completes performance.

If County defaults in the performance of any of the obligations or conditions required to be performed by County under this Lease, Lessee may in no event withhold payment of the Rent, or apply said rent to cure the alleged default.

28. TERMINATION OF LEASE: If this Lease shall terminate for any reason other than a default by the County, County shall not be obligated to return, reimburse, compensate or pay Lessee for the cost or value of the Improvements or any portion thereof or for the costs and expenses attendant to the obligations assumed by Lessee hereunder, or otherwise.

29. QUITCLAIM UPON TERMINATION. If this Lease shall terminate for any reason, or otherwise expire, then in that event, Lessee shall, upon demand therefore, promptly execute in good and sufficient form a quit claim deed re-conveying to County all of Lessee's right, title and interest in and to the Property.

30. NOTICE: All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other shall be deemed to have been fully given when made in writing and delivered in person or deposited in the United States mail, certified and postage prepaid, addressed to:

Lessee: Pacific Land Enterprises, Inc.  
130 E. Main St.  
Grass Valley, CA 95945  
(530) 273-9262 voice  
(530) 273-9273 fax

County: County of Nevada, County  
Nevada County Airport  
12818 Loma Rica Drive  
Grass Valley, CA 95945  
(530) 273-3374 voice  
(530) 274-1003 fax

The Address to which any such written communication may be given or sent to either party may be changed by written notice given by such party as above provided.

31. MISCELLANEOUS:

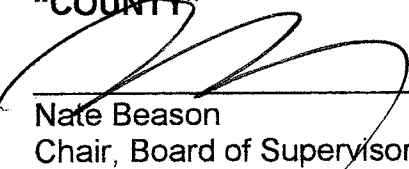
- a. Partial Validity. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. This Lease shall be governed by the laws of the State of California. Venue for purposes of litigation shall be in the County of Nevada. The language in all parts of this Lease shall be construed as a whole according to the fair meaning, and not strictly for or against either County or Lessee.
- b. No Other Agreements. All preliminary and contemporaneous agreements and understanding are merged and incorporated into this Lease that contains the entire agreement between the parties. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.
- c. Successors to County. Should County at any time during the term of this Lease or any extension hereof, decide to sell all or any part of the Property to a purchaser other than Lessee, such sale shall be under and subject to this Lease and Lessee's rights hereunder, and any sale by County of the portion of the subject property underlying any right-of-way herein granted shall be under and subject to the right of Lessee in and to such right-of-way.
- d. No Agency. This Lease does not create a relationship of principal and agent, or partnership, or joint venture, or any association other than that of Lessor and Lessee.
- e. Binding on Successors and Assigns. This Lease shall extend to and bind the parties hereto, their representatives, successors and assigns.
- f. Attorney Fees. In the event either of the Parties initiates legal action to enforce the provisions of this Lease, the prevailing party shall be entitled to recover actual attorneys fees incurred and costs.
- g. Subordination and Attornment. The County agrees to cooperate with the Lessee and any lender that Lessee has selected to provide financing for development of the Property and construction of facilities thereon. County agrees to timely provide any documentation reasonably necessary or required by a lender for Lessee to obtain financing required for the development and construction. County's rights hereunder are, and will at all times be, subordinate to all ground or underlying leases, mortgage, trust deeds or the charge or lien resulting from, or any instruments of, any financing, refinancing or collateral financing (collectively, an "encumbrance") or any renewals or extensions thereof from time to time in existence against the Project or any part thereof. Upon request, County

will subordinate this Lease in such form as Lessee requires to any encumbrance and, if requested.

- h. Force Majeure. Notwithstanding anything in this Lease, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labor troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or other reason whether of a like nature or not which is beyond the reasonable control of the party obligated to perform the work or acts required under the terms of this Lease, then the performance of that term, covenant or act is excused for the period of the delay and the party will be entitled to perform that term, covenant or act within the appropriate time period after the expiration of the period of the delay. However, the provisions of this Section do not operate to excuse Lessee from the prompt payment of Rents.
- i. Lessee's Due Diligence. Lessee shall require until August 31, 2006 to complete the Due Diligence (the "Due Diligence Period") of the Property. County has made or shall make available to Lessee for Lessee's review and copying within five (5) business days from August 22, 2006, the following documents (and any other documents reasonably requested by Lessee, if such documents are within the possession of County, or are reasonably available to County ("Due Diligence Materials")):
  - (a) Any surveys respecting the Property;
  - (b) Legible copies of the bills issued for the most recent tax year for all real estate taxes;
  - (c) All reports, studies, drawings, or analyses relating to the Property, including without limitation, geotechnical, environmental, architecture, surveys, or engineering studies reports;
  - (d) All notes, memoranda, and written communications relating to the development of the Property, including without limitation, negotiations with any governmental or quasi-governmental agencies.
- j. Lessee's Right to Conduct Due Diligence. During the Due Diligence Period, Purchaser shall have the right to inspect and approve all Due Diligence Materials and all physical, environmental, legal and any other matters relating to the Property (including zoning, land use and similar public agency or governmental conditions or approvals with respect to the ownership, operation and use of the Property) as Lessee may, in Lessee's judgment, elect to investigate at Lessee's cost; and, during the Due Diligence Period, Lessee shall be permitted to make complete physical,

environmental, legal and other inspections of the Property (at Lessee's cost) and to make and remove copies of any and all records and files regarding the Property. If Lessee, in Lessee's sole and absolute discretion, is satisfied with all of the Due Diligence Materials and all of the inspections or investigations Lessee elects to undertake as described above, Lessee shall give written notice of such satisfaction to County prior to the end of the Due Diligence Period ("Notice of Due Diligence Approval"). If Lessee does not provide a Notice of Due Diligence Approval, the condition of the Property shall be disapproved and, except as otherwise provided, this Agreement shall terminate and Lessee shall not have any obligation to County to proceed with this Lease.

**"COUNTY"**

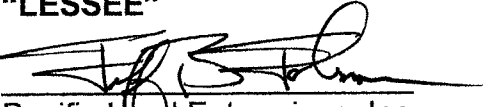
  
Nate Beason  
Chair, Board of Supervisors

8-22-06  
Date

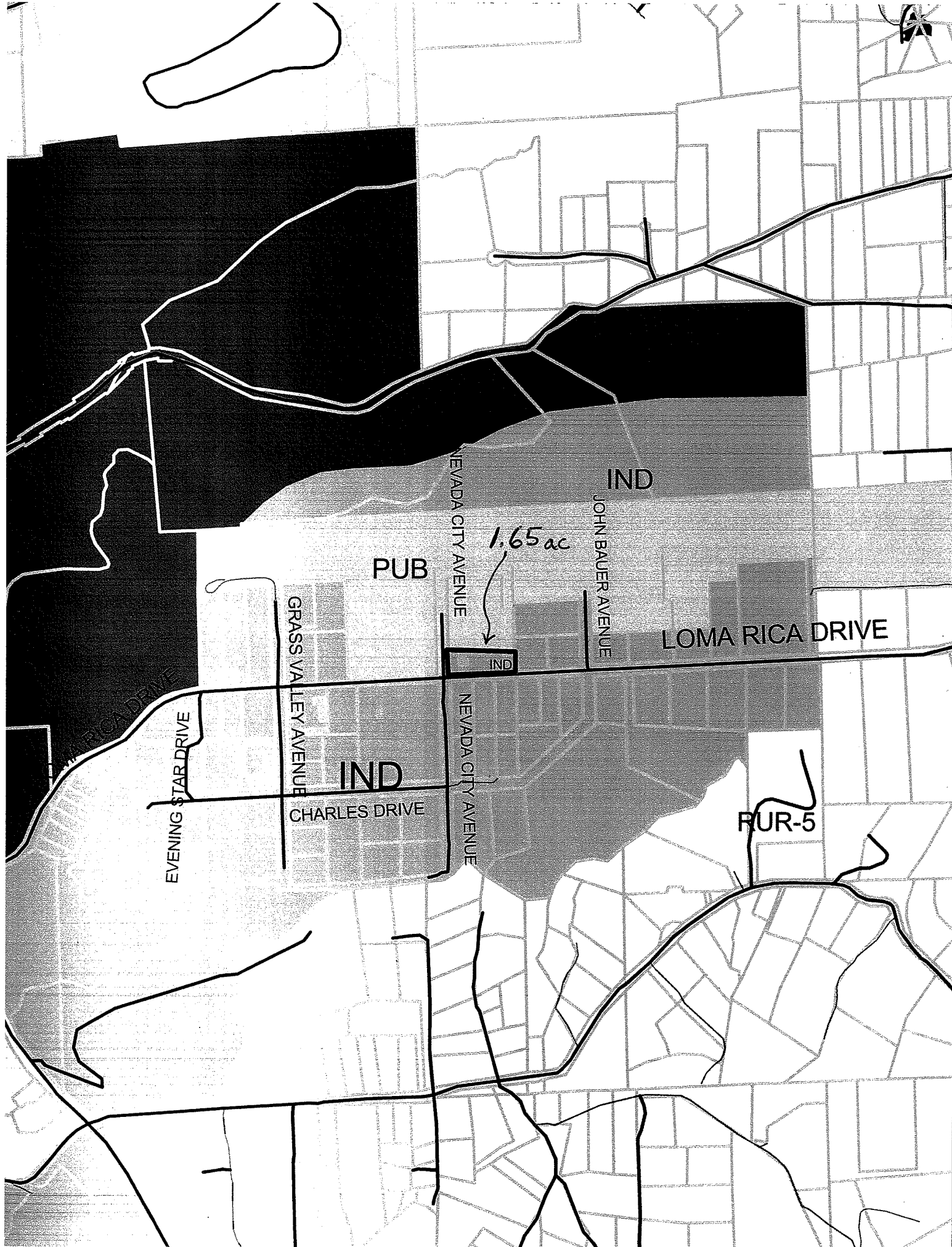
**"ATTEST"**

  
Cathy R. Hanson  
Clerk of the Board

**"LESSEE"**

  
Pacific Land Enterprises, Inc.  
Jeff Johnson, President

Date: 8/22/06



Lot 5 - Exhibit A