

# TOWN OF EATONVILLE

## Agenda Staff Report

Agenda Item No.:	<u>Resolution 2017-D</u>	Meeting Date:	<u>February 13, 2017</u>
Subject:	<u>Approval of a Hangar Agreement</u>	Prepared by:	<u>Town Attorney</u>
	<u>Between the Town and Garage Plus</u>		
	<u>Storage Aviation, LLC</u>	Atty Routing No:	<u>044-14</u>
		Atty Review Date:	<u>February 8, 2017</u>

**Summary:** In 2011 the owner of tax parcel number 0416144156, DN Properties I, LLC, constructed a four unit hangar. In 2012 the Town of Eatonville issued a certificate of occupancy for unit 1. The hangar is located on property that is zoned Aerospace and is subject to the Town's airport overlay zone regulations, which include height restrictions and a requirement that a property owner/developer obtain a Federal Aviation Administration (FAA) determination of no hazard to air navigation prior to construction. DN Properties did not comply with the height restrictions and did not obtain the required FAA determination prior to construction. DN Properties is now in receivership.

Pacific Northwest Land and Development Company has entered into a purchase and sale agreement to purchase the hangar and the underlying real property from the court-appointed receiver. In 2014 Pacific Northwest Land and Development Company submitted a Form 7460-1 to the FAA. The FAA determined the existing hangar would be a hazard to air navigation because it exceeds the transitional surface area and the visual traffic pattern protected airspace by 23 feet. The FAA's determination is advisory only and the FAA has no power to prevent development. Instead, the authority to prevent construction lies with the Town, which in this case issued a construction permit and certificate of occupancy.

Pacific Northwest Land and Development Company has assigned its interest in the purchase agreement to Garage Plus Storage Aviation, LLC (Garage Plus). Garage Plus proposes: to occupy all four units of the hangar structure at its own risk; to carry commercial liability insurance in the amount of \$3 million that names the Town as an additional insured; to defend and indemnify the Town for property damage, personal injury and death arising from its use of the hangar; and to install red obstruction lights on the hangar as recommended by the FAA. The precise terms of the Garage Plus's use are detailed in the attached Hangar Agreement. These terms and conditions will run with the land and will be binding on Garage Plus's successors and assigns.

**Recommendation:** Staff recommends adoption of the Hangar Agreement between the Town and Garage Plus Storage Aviation, LLC

**Motion for consideration:** I move to adopt the Hangar Agreement between the Town and Garage Plus Storage Aviation, LLC

**Fiscal Impact:**

**Attachments:** Resolution No. 2017-D  
Hangar Agreement

**RESOLUTION NO. 2017 - D**

**A RESOLUTION OF THE TOWN OF EATONVILLE,  
WASHINGTON, APPROVING AN AGREEMENT BETWEEN  
THE TOWN AND GARAGE PLUS STORAGE AVIATION, LLC  
REGARDING THE USE OF AN EXISTING HANGAR**

**WHEREAS**, in 2011 the owner of tax parcel number 0416144156 constructed a four unit hangar and in 2012 the Town of Eatonville issued a certificate of occupancy for unit 1; and

**WHEREAS**, the hangar is located on property that is zoned Aerospace and that is subject to airport overlay zone regulations that include height restrictions and a requirement that the property owner/developer obtain a Federal Aviation Administration (FAA) determination of no hazard to air navigation prior to construction; and

**WHEREAS**, the prior property owner/developer did not comply with the height restrictions and did not obtain the required FAA determination prior to construction; and

**WHEREAS**, the prior property owner is now in receivership and Pacific Northwest Land and Development Company has entered into a purchase and sale agreement to purchase the hangar and the underlying real property from the court-appointed receiver; and

**WHEREAS**, in 2014 Pacific Northwest Land and Development Company submitted a Form 7460-1 to the FAA and the FAA determined the existing hangar would be a hazard to air navigation because it exceeds the transitional surface area and the visual traffic pattern protected airspace by 23 feet, which determination is advisory only; and

**WHEREAS**, Pacific Northwest Land and Development Company has assigned its interest in the purchase agreement to Garage Plus Storage Aviation, LLC (Garage Plus); and

**WHEREAS**, Garage Plus proposes to occupy all four units of the hangar structure at its own risk, to carry commercial liability insurance in the amount of \$3 million that names the Town as an additional insured, to defend and indemnify the Town for property damage, personal injury and death arising from its use of the hangar, and to install red obstruction lights on the hangar as recommended by the FAA; now, therefore;

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE,  
WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The Council approves and the Mayor is authorized to sign a Hangar Agreement between the Town and Garage Plus Storage Aviation, LLC in the form attached as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this \_\_\_\_\_ day of February 2017.

\_\_\_\_\_  
Mike Schaub, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Linnemeyer, Town Clerk

After Recording, Return to:

Alison Moss  
Schwabe, Williamson & Wyatt. P.C.  
1420 Fifth Avenue, Suite 3400  
Seattle, WA 98101

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**DOCUMENT TITLE:** HANGAR AGREEMENT

**REFERENCE NUMBER OF RELATED DOCUMENT:** Not Applicable

**GRANTOR(S):** GARAGE PLUS STORAGE AVIATION LLC  
TOWN OF EATONVILLE

**GRANTEE(S):** GARAGE PLUS STORAGE AVIATION LLC  
TOWN OF EATONVILLE

**ABBREVIATED LEGAL DESCRIPTION:** \_\_\_\_\_  
Complete legal description on Exhibit A.

**ASSESSOR'S TAX / PARCEL NUMBER(S):** 0416144156

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### HANGAR AGREEMENT

This Hangar Agreement ("Agreement") is executed and entered into by and between the Town of Eatonville ("Eatonville") and Garage Plus Storage Aviation LLC, Washington limited liability company ("Owner"), each individually a "Party" and collectively the "Parties," for the purposes set forth herein.

### RECITALS

- A. Eatonville approved the original preliminary plat application submitted by DN Properties I, LLC ("DNI"), for Aviator Heights on February 12, 2007 via Resolution 2007-F.
- B. The Aviator Heights plat is comprised of Parcels 0416144156, 0416144157, and 0416144158. The zoning is Aerospace and the plat is subject to the airport overlay

zone regulations set forth in Eatonville Municipal Code (EMC) 18.04.187, which includes height restrictions and a requirement that the Federal Aviation Administration (“FAA”) issue a determination of no hazard to air navigation before a building permit is issued.

- C. On July 1, 2011, Eatonville issued Permit Number 2011.0069 for four hangar units (the “Hangar Units”) on Parcel 0416144156, the legal description of which is legally described on the attached **Exhibit A**. The portion of such real property on which the four Hangar Units are located is referred to herein as the “Hangar Property.” On October 17, 2012, it issued a Certificate of Occupancy for Building Permit 2011.0069 for the office area and Unit 1 of the Hangar Units within the Aviator Heights plat (“Hangar Unit 1”).
- D. DNI constructed a structure containing the four Hangar Units on Parcel 0416144156. Based on extensive research, the parties believe that DNI did not file Form 7460-1 with the FAA as required by the Eatonville Municipal Code.
- E. Pacific Northwest Land and Development Company has entered into purchase and sale agreements for the parcels which comprise the Aviator Heights plat (“Purchase Agreements”) with the court appointed receiver for DNI.
- F. In connection with its request for a modification of the Aviator Heights preliminary plat, Pacific Northwest Land and Development Company filed Form 7460-1 for the structure containing Hangar Units 1-4.
- G. On September 3, 2014, the FAA issued a Determination of Hazard to Air Navigation regarding “Building Existing Hangar Unit 1”. It observed that the building is prominent and highly visible during daylight hours. It strongly recommended red obstruction lights to make the hangar building more visible and to identify it as an obstruction to pilots at night.
- H. Eatonville approved a modification to the Aviator Heights preliminary plat on March 23, 2015 via Resolution 2015-H.
- I. Pacific Northwest Land and Development Company has assigned its interest in the Purchase Agreements to Owner.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants and conditions set forth below, the Parties agree as follows:

- 1. **Recitals.** The Recitals set forth above are incorporated herein as if set forth in full.
- 2. **Contingency.** This Agreement is contingent upon Owner’s purchase of the Hangar Property.

3. **Risks of Hangar Occupancy.** Owner agrees that it will occupy Hangar Units 1-4 at its own risk. Owner further agrees that it will include in any lease or sale of any of the Hangar Units a provision requiring the lessee or purchaser to acknowledge that it will occupy the Hangar Unit at its own risk.

4. **Conditions Precedent to Occupancy of Any Hangar Unit.**

- a. Prior to occupancy of any of the Hangar Units, Owner will:
- i. Install red obstruction lights on each of the four corners and at the midpoint of the east and west sides of the structure containing Hangar Units 1, 2, 3, and 4.
  - ii. Obtain Commercial General Liability insurance in an amount of not less than three million dollars (\$3,000,000.00). This amount of coverage may be within a single policy or as a combination of an underlying policy plus an umbrella policy.
  - iii. The Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability for damages because of bodily injury or death, property damage and personal and advertising injury occurring at the Hangar Property, including liability assumed under an insured contract. Insurance is to be placed with an insurer(s) with a current A.M. Best rating of not less than A:VII. The Town of Eatonville shall be named by endorsement as an additional insured under the Owner's Commercial General Liability insurance policy, and Umbrella policy, with respect to this Agreement using ISO Additional Insured endorsement CG 20 10 10 01 or substitute endorsements (such as Liberty Mutual's ISO Commercial General Liability Extension CG 88 10 04 13) providing equivalent coverage. The Commercial General Liability policy shall include, to the extent commercially available at reasonable rates, Waiver of Transfer of Rights of Recovery Against Others to Us endorsement (CG 24 04 05 09) or reasonably equivalent coverage. The policy/ies shall be maintained as long as any of the Hangar Units is occupied.
  - iv. If Owner makes any improvements or alterations to the Hangar Units, Owner will cause its contractor to obtain Commercial General Liability Insurance meeting the requirements of subsections ii and iii above, and in addition, providing coverage for stop gap liability and the products-completed operations hazard. The Town of Eatonville shall be named by endorsement as an additional insured under the contractor's Commercial General Liability insurance policy with respect to this Agreement using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing reasonably equivalent coverage. The Commercial General Liability policy shall include, to the extent commercially available

at reasonable rates, Waiver of Transfer of Rights of Recovery Against Others to Us endorsement (CG 24 04 05 09) or equivalent coverage. The policy/ies shall be maintained as long as any construction activities are being performed at any of the Hangar Units.

- v. Owner, its successors and assigns, shall furnish Eatonville with original certificates and a copy of the amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements.
  - b. Prior to occupancy of Hangar Units 2, 3, and/or 4, Owner shall obtain a certificate of occupancy for the relevant Hangar Unit or Units.
5. **No Limitation.** Owner's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Owner to the coverage provided by such insurance or otherwise limit the Town's recourse to any remedy available at law or in equity.
  6. **Agreement to Defend and Indemnify.** Owner, its successors and assigns, shall indemnify the Town of Eatonville from and against any and all claims, demands, causes of action, suits or judgments including but not limited to, any claims of insurance carriers, for deaths or injuries to persons or for loss of or damage to property arising out of or in connection with the use and occupancy of the Hangar Units by Owner, its tenants, agents, servants, employees or invitees, except for injuries and damages caused by the sole negligence of Eatonville. In the event of any claims made or suits filed against Eatonville, the town may, at its option, require Owner to resist or defend such action or proceeding at Owner's own cost and expense by counsel reasonably satisfactory to Eatonville.
  7. **Non-disturbance of Occupancy of Hangar Units.** So long as Owner, its successors, and assigns comply with the terms of this Agreement, and all applicable requirements of federal, state, and local law, Eatonville will allow occupancy of Hangar Units 1, 2, 3, and 4 and will not seek their demolition. Without limiting the generality of the foregoing, Eatonville agrees not assert to that the Hangar Units, as currently constructed, violate requirements of the Town of Eatonville.
  8. **Recording.** Owner, at its sole expense, shall record a copy of this Agreement with the Pierce County Auditor.
  9. **Binding Agreement.** This Agreement shall be binding on the Parties and on Owner's successors in interest to the Hangar Property.
  10. **Runs with the Land.** All terms, conditions, agreements, restrictions, and covenants contained in this Agreement (a) shall touch and concern the Hangar Property, (b) shall be covenants running with the Hangar Property and (c) shall be binding upon, and inure to the benefit of, the Hangar Property and each owner of the Hangar Property and their heirs, transferees, mortgagees, successors, and assigns and all



parties claiming under them or having or acquiring any right, title or interest in all or any portion of the Hangar Property. Liability for the obligations of the owners of the Hangar Property shall be limited to the period of time during which each such party shall have owned the Hangar Property. If the Hangar Property later becomes subject to a condominium form of ownership, the condominium owners' association shall be considered the sole "Owner" of the Hangar Property for purposes of this Agreement.

11. **Notice to Town.** In the event of a change of ownership in all or any portion of the Hangar Property, the new owner shall, within fourteen (14) calendar days provide the Town with contact information and copies of all documents required by this Agreement, including but not limited to the insurance documents described in Section 4, above.
12. **Cooperation.** The Parties agree to take all necessary actions, and execute further documents to implement the intent of this Agreement.
13. **Interpretation.** Each of the Parties was represented by an attorney with respect to this Agreement, or was given a reasonable opportunity to consult with their own legal counsel, and has had ample opportunity to review this Agreement. This Agreement shall not be interpreted in favor of or against either Party by reason of whose attorney originally drafted it.
14. **Disputes.** In the event of any future dispute over the terms of this Agreement or the performance of this Agreement, the parties shall first engage in arbitration of that dispute, to be initiated within 60 days from the date of notice to the other parties of the dispute. The venue for any such arbitration shall be JAMS, WAMS or JDR in Tacoma, unless the parties agree to some other venue. The prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in that arbitration.

Should any party be unsatisfied with the arbitration result, said party may seek judicial proceedings to appeal the arbitration result. It is specifically agreed that the parties are not waiving any rights to seek redress through judicial proceedings. The parties simply intend that disputes over the terms of this Agreement or the performance of this Agreement first go through arbitration, then judicial proceedings. Venue for any judicial action in any way arising out of this Agreement shall be in the Pierce County Superior Court. In the event of any such dispute, the Party substantially prevailing in the resolution thereof shall be entitled to receive from the other Party, in addition to any substantive relief, the prevailing Party's reasonable attorneys' fees incurred in the enforcement of the terms of this Agreement.

15. **Counterparts.** This Agreement may be executed in identical counterparts, and once all of the Parties hereto have executed a counterpart, this Agreement shall be fully enforceable, as if all Parties had signed the same original instrument.
16. **Governing Law; Severability.** This Agreement shall be governed by, and

construed in accordance with, the laws of the State of Washington. If any court of competent jurisdiction shall determine that any portion of this Agreement is unenforceable, then, to the extent possible, the remaining portions hereof shall be unaffected thereby.

17. **Authority.** The Parties each represent and warrant that they, and the individuals signing this Agreement, have the respective power and authority, and are duly authorized to execute, deliver and perform the obligations under this Agreement.

**Town of Eatonville**

By: \_\_\_\_\_  
Its:

Dated: \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of THE TOWN OF  
EATONVILLE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

\_\_\_\_\_  
NOTARY PUBLIC FOR WASHINGTON  
residing at \_\_\_\_\_  
\_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**[Remainder of page intentionally left blank. ]**

**Garage Plus Storage Aviation, LLC**

By: \_\_\_\_\_  
Its: Managing Member

Dated: \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that he/she signed  
this instrument, on oath stated that he/she was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of GARAGE PLUS STORAGE  
AVIATION LLC to be the free and voluntary act of such party for the uses and purposes  
mentioned in the instrument.

\_\_\_\_\_  
NOTARY PUBLIC FOR WASHINGTON  
residing at \_\_\_\_\_

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of the Property**

THAT PORTION OF PARCEL A, TOWN OF EATONVILLE BOUNDARY LINE ADJUSTMENT NO. 200808115005, ACCORDING TO THE MAP RECORDED AUGUST 11, 2008, RECORDS OF PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL A; THENCE NORTH 78°13'47" WEST ALONG THE SOUTH LINE THEREOF A DISTANCE OF 85.37 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL; THENCE NORTH 06°24'07" EAST ALONG THE WEST LINE THEREOF A DISTANCE OF 353.41 FEET; THENCE LEAVING SAID LINE SOUTH 88°21'29" EAST A DISTANCE OF 85.29 FEET TO THE EAST LINE OF SAID PARCEL; THENCE SOUTH 06°24'07" WEST ALONG SAID LINE A DISTANCE OF 368.48 FEET TO THE POINT OF BEGINNING.



**KPG**

**Town of Eatonville**  
**SR 161/Washington Avenue North Corridor Streetscape Project**  
**Cost Estimate - Bid Document**  
**January, 2017**

Item	Sect. No.	Description	Quantity	Unit	Unit Cost	Total
1	1-04	Minor Change	1	EST	\$10,000.00	\$ 10,000.00
2	1-05	Roadway Surveying	1	LS	\$7,500.00	\$ 7,500.00
3	1-05	Record Drawings (Minimum Bid \$3,000)	1	LS	\$3,000.00	\$ 3,000.00
4	1-07	SPCC Plan	1	LS	\$2,000.00	\$ 2,000.00
5	1-09	Mobilization	1	LS	\$56,300.00	\$ 56,300.00
6	1-10	Project Temporary Traffic Control	1	LS	\$50,000.00	\$ 50,000.00
7	2-01	Clearing and Grubbing	1	LS	\$3,000.00	\$ 3,000.00
8	2-02	Removal of Structure and Obstruction	1	LS	\$7,000.00	\$ 7,000.00
9	2-03	Roadway Excavation Incl. Haul	470	CY	\$50.00	\$ 23,500.00
10	2-03	Gravel Borrow Incl. Haul	30	TON	\$35.00	\$ 1,050.00
11	4-04	Crushed Surfacing Base Course	200	TN	\$45.00	\$ 9,000.00
12	4-04	Crushed Surfacing Top Course	270	TN	\$45.00	\$ 12,150.00
13	5-04	HMA CI 1/2" PG 64-22	185	TN	\$120.00	\$ 22,200.00
14	5-04	Commercial HMA	30	TN	\$120.00	\$ 3,600.00
15	7-01	Downspout and Roof Drain	1	LS	\$1,000.00	\$ 1,000.00
16	7-04	Schedule A Storm Sewer Pipe 12 In. Diam.	30	LF	\$80.00	\$ 2,400.00
17	7-04	Ductile Iron Storm Sewer Pipe 8 In. Diam.	50	LF	\$90.00	\$ 4,500.00
18	7-04	Ductile Iron Storm Sewer Pipe 12 In. Diam.	230	LF	\$120.00	\$ 27,600.00
19	7-05	Yard Drain	1	EA	\$800.00	\$ 800.00
20	7-05	Catch Basin Type 1	7	EA	\$1,400.00	\$ 9,800.00
21	7-05	Catch Basin Type 1L	2	EA	\$1,900.00	\$ 3,800.00
22	7-05	Catch Basin Type 2 48 In. Diam.	1	EA	\$3,400.00	\$ 3,400.00
23	7-05	Adjust Catch Basin	4	EA	\$600.00	\$ 2,400.00
24	7-05	Furnish and Install Circular Frame and Cover	1	EA	\$800.00	\$ 800.00
25	7-09	Class 52 Ductile Iron Pipe for Water Main 6 In. Diam.	14	LF	\$85.00	\$ 1,190.00
26	7-09	Class 52 Ductile Iron Pipe for Water Main 12 In. Diam.	50	LF	\$120.00	\$ 6,000.00
27	7-14	Hydrant Assembly	1	EA	\$6,000.00	\$ 6,000.00
28	7-15	Adjust Water Meter	5	EA	\$500.00	\$ 2,500.00
29	8-01	Erosion/Water Pollution Control	1	LS	\$3,000.00	\$ 3,000.00
30	8-02	Property Restoration	1	EST	\$2,000.00	\$ 2,000.00
31	8-02	Topsoil Type A	5	CY	\$45.00	\$ 225.00
32	8-02	Topsoil Type D	28	CY	\$95.00	\$ 2,660.00
33	8-02	Bark or Wood Chip Mulch	2	CY	\$45.00	\$ 90.00
34	8-02	Seeded Lawn Installation	40	SY	\$3.00	\$ 120.00
35	8-02	PSIPE Tilia cordata 'Corzam' / Corinthian Linden; 2" Cal., 10'-12' Ht.	5	EA	\$500.00	\$ 2,500.00
36	8-02	PSIPE Juniperus sabina 'Broadmoor' / Broadmoor Juniper; 2 Gal. Cont.	11	EA	\$28.00	\$ 308.00
37	8-04	Cement Conc. Traffic Curb and Gutter	860	LF	\$30.00	\$ 25,800.00
38	8-04	Cement Conc. Extruded Curb	60	LF	\$15.00	\$ 900.00
39	8-06	Cement Conc. Driveway Entrance	220	SY	\$75.00	\$ 16,500.00
40	8-14	Cement Conc. Sidewalk	420	SY	\$65.00	\$ 27,300.00
41	8-14	Cement Conc. Curb Ramp Type Parallel A	6	EA	\$2,200.00	\$ 13,200.00
42	8-14	Concrete Steps and Landing	1	LS	\$3,000.00	\$ 3,000.00
43	8-20	Traffic Signal System at SR 161 & Center St E, Complete	1	LS	\$315,000.00	\$ 315,000.00
44	8-20	Illumination System, Complete	1	LS	\$55,000.00	\$ 55,000.00
45	8-20	Underground Electrical Service Connections	1	LS	\$15,000.00	\$ 15,000.00
46	8-21	Permanent Signing	1	LS	\$2,500.00	\$ 2,500.00
47	8-22	Remove Pavement Markings	1	LS	\$500.00	\$ 500.00
48	8-22	Paint Line	2170	LF	\$1.00	\$ 2,170.00
49	8-22	Painted Wide Lane Line	280	LF	\$2.00	\$ 560.00
50	8-22	Plastic Crosswalk Line	1520	SF	\$8.00	\$ 12,160.00
51	8-22	Plastic Stop Line	130	LF	\$10.00	\$ 1,300.00
52	8-22	Plastic Traffic Arrow	6	EA	\$350.00	\$ 2,100.00
53	8-26	Tree Grate	5	EA	\$1,700.00	\$ 8,500.00
54	8-27	Handrail	16	LF	\$200.00	\$ 3,200.00
55	8-28	Potholing	5	EA	\$600.00	\$ 3,000.00
56	8-28	Resolution of Utility Conflicts	1	EST	\$5,000.00	\$ 5,000.00
<b>Total Construction Cost Estimate</b>						<b>\$ 806,083.00</b>

