

CITY OF SAN DIEGO
M E M O R A N D U M

FILE: City Aero Industrial Park Subdivision

DATE: February 27, 1992

TO: Terry Flynn, General Services Director and James L. Spotts, Property Director

FROM: Peter R. Soderquist, Deputy Director/Airports Division via G. Dainel Ojeda, Deputy Director/Field Engineering Division

SUBJECT: EXCLUSIVE-USE PERMIT - Lot 4 City Aero Industrial Park

Airports Division, a Division of the City's General Services Department, hereinafter referred to as Airports, herein grants permission to the Field Engineering Division, of the City's Engineering and Development Department, hereinafter referred to as Permittee, the exclusive use of City-owned property known as a portion of Lot 4 of the City Aero Industrial Park, shown on Exhibit A hereof and hereinafter referred to as the Premises. This Permit is subject to the following terms and conditions:

1. Use - Permittee's use of the above-referenced premises shall be limited to the placement of temporary office trailers for use by the Field Engineering Division of the City's Engineering and Development Department. A portion of said premises lies within the boundary of Montgomery Field Airport's runway approach clear zone and shall be developed as per site plan, shown on Exhibit "B".
2. Commencement and Termination - This Permit shall become effective on September 1, 1991, and continue on an annual basis thereafter. However, this Permit may be terminated upon one hundred and eighty (180) days prior written notice by either party, without necessity of cause.

It is mutually agreed that Airports shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this Permit by Airports and further that Permittee expressly waives any claims of expense or loss which it might incur as a result of termination of this Permit.

3. Monthly Permit Fee - Monthly consideration for this Permit shall be credited through the payment of rent assessed to the Lessee of Lot 5 of City Aero Industrial Park Subdivision, as per City Clerk Document No. RR265511. Upon expiration or earlier termination of said agreement, Permittee may be required to pay the then current fair market rental rate for its use of the portion of Lot 4 within the boundary of Montgomery Field Airport. As additional consideration,

Permittee shall, at its own expense, preserve, repair and maintain the premises in a manner satisfactory to Airports.

4. Maintenance - Permittee shall not commit any public or private nuisance and shall keep the premises and adjacent exterior yard clean and clear of refuse and obstructions at its own expense. Disposition of all garbage, trash, industrial waste and refuse shall be made in a manner satisfactory to Airports.
5. Liability - Permittee shall assume the defense of, and save Airports harmless from all claims, expenses and liabilities of every kind, nature and description resulting in any manner from the use or condition of the property and any and all operations conducted thereon by Permittee.
6. Aviation Easement - Notwithstanding the foregoing, the Federal Aviation Administration (FAA) has consented to the release of the permit premises for non-aeronautical revenue production use (portions of Lots 2, 3, 4 and 5 of the City Aero Industrial Park) under the following conditions:
 - A. Permittee hereby grants an assignable easement and right-of-way for the public use over all of Lot 4, City Aero Industrial Park, Map No. 12632 filed in the Office of the San Diego County Recorder as File No. 90-242522, located in the City of San Diego, County of San Diego, State of California, an elevation 473 feet M.S.L. and upward, for the use and benefit of the public for the free and unobstructed passage of aircraft in, through and across all the airspace above said property, a portion of which is located above a plane known as the Approach Surface and is subject to all Federal Aviation Administration Regulations regarding Approach Surfaces.
 - B. Permittee hereby grants the continuing right of Airports, its successors and assigns, to clear and keep clear any and all obstructions which encroach upon or extend into the hereinabove described easement and right-of-way, and for such purpose to enter upon the surface of Permittee's premises and lower or remove those portions of buildings or any structures, or trees or other vegetation which extends into the easement and right-of-way herein granted, and together with the right of ingress to, egress from, and passage over Permittee's premises for the purpose of effecting and maintaining such clearance as aforesaid. Any such required removal of any obstruction shall be at the Permittee's sole expense.

Permittee, for Permittee and the successors in interest and assigns of Permittee, covenants and agrees that neither they nor any of them will erect, or permit the erection of, any structure or object, or permit the growth of any tree or vegetation, or allow any structure, object, tree, or other vegetation to encroach upon or extend into said easement and right-of-way above a height

473 feet M.S.L. and upward, which has been determined by the City Airports Division and the application of the requirements of 14 C.F.R., Part 77 (FAR Part 77), and that neither they nor any of them will hereafter use, or permit or suffer the use of Permittee's premises in such manner as to create electrical interference with radio communication to or from any aircraft, or as to make it difficult for aircraft pilots to distinguish between airport lights and other lights or as to impair visibility in the vicinity of the airport, or as to otherwise endanger the landing, taking off, or maneuvering of aircraft.

- C. Permittee further grants to Airports the continuing right of the Public to cause or allow in all the airspace above the surface of Permittee's premises such noise as may be caused by or result from the operation of aircraft; it being understood and agreed that the City of San Diego intends to maintain and develop the adjacent airport in such a manner that said airport and the easement granted herein will be used at all times and by every type of aircraft which is now in existence or which may be developed in the future for both commercial and noncommercial flights; and Permittee, for Permittee and the successors in interest and assigns of Permittee, does hereby fully waive and release any right or cause of action which they or any of them now have or may have in the future against the City of San Diego, its successors and assigns, on account of or arising out of such noise heretofore and hereafter caused by the operation of aircraft in said airspace. It being understood and agreed that the aforesaid covenants and agreements shall run with the land.

7. Airport Provisions:

- A. Permittee Use and Construction to Conform with Federal Aviation Regulations. Permittee agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Permittee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.
- B. Permittee's Noninterference with Aircraft. Permittee and Permittee's successors, assigns and sublessees agree not to use the premises in any manner or act in any manner that might interfere with any aircraft landing or taking off from Montgomery Field Airport or otherwise create a hazard. If this covenant is breached in any way, Airports reserves the right to enter the premises and abate or eliminate the interference at the expense of Permittee.
- C. Permit Subordinate to CITY-United States Agreements. This permit shall be subordinate to the terms of any existing or future agreements between CITY and the United States, or to any United States legal requirement relative to the development, operation or

maintenance of the airport.

- D. Height Limitation. Permittee and Permittee's successors, sublessees and assigns agree not to erect or permit any structure or tree on the premises to reach a mean sea level elevation of 473 feet. If this covenant is breached in any way, Airports reserves the right to enter the premises and remove the structure, object, or tree, at the expense of Permittee.
- E. Right of Flight Easement. Airports and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the premises, for the benefit and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near Montgomery Field Airport.
- F. War or National Emergency. In the event of war or national emergency, this permit and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of Montgomery Field Airport.
- G. Airport Development. Airports reserves the right to further develop, change or improve the airport and its routes and landing areas as Airports sees fit, without Permittee interference or hindrance and regardless of Permittee's views and desires.
- H. Nonexclusive Right. Permittee understands and agrees that nothing in this permit shall be construed to grant or authorize an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (Title 49, Section 1349 of the United States Code).
- I. Landing Area Maintenance. Airports reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities. Airports also has the right to direct and control all Permittee activities affecting the maintenance and repair of these facilities.
- J. FAA Nondiscrimination Covenant.
 - 1. Permittee and Permittee's representatives, successors, sublessees and assigns agree, as part of the consideration that:
 - a. No person shall be denied benefits, participation or subjected to discrimination in the use of facilities on the premises based on race, color, sex or national origin.
 - b. No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements nor the furnishing of any

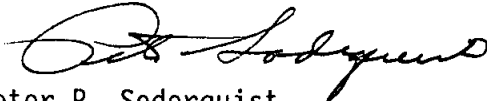
services on the premises, based on race, color, sex or national origin.

- c. Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), 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," as now exists or may be amended in the future.
2. If any of the provisions are breached, Airports may terminate the permit and reenter and repossess the premises as if this permit had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are allowed and completed, including expiration of appeal rights.
3. Permittee agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. Permittee is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If Permittee does not comply with this provision, Airports has the right to terminate this permit agreement, without liability, or either Airports or the United States may judicially enforce this entire covenant.
4. Permittee agrees to include the entire covenant in any sublease or permit agreement by which Permittee grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the permit premises.
- K. Equal Opportunity. Permittee, Permittee's successors, assigns, sublessees, and any suborganizations agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to ensure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.
- L. Airports Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between Airports and the United States of America result in Permittee's inability to operate as a business on the premises, or if the business operations permitted under this agreement are materially affected during a period of subordination, Airports, upon written request from Permittee, will terminate this permit or extend the term of this permit for the period of time that Permittee's operation is affected, and no rent shall accrue during any period of inoperation.

- M. Licenses and Certifications. Permittee agrees that it will not maintain any activities such as a flight school, air charter, air taxi or grounds school, without the required FAA certifications and licenses. Failure to comply with this provision constitutes a default and Airports then has the right to terminate the permit without liability.
- N. Employee Conduct. Permittee shall be responsible for the conduct of any employee of Permittee on the entire property, if that employee is on airport property during any period of employment.
- O. Aircraft Parking. Permittee shall require that all aircraft under its control be parked only on the permit premises, except as otherwise provided by the direction of the City Manager. At no time shall any aircraft, vehicle or other object, including refuse, under Permittee's control, be allowed to obstruct any designated taxiways.
- P. Minority Business Policy. If Permittee receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, Permittee agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. Permittee and Permittee's contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation- assisted contracts.
- Q. Termination. If Airports should require the premises in connection with the future expansion and/or operation of the airport, Airports may, with one hundred eighty (180) days advance written notice, terminate this permit.

This activity is a Class 3 project, categorically exempt from CEQA pursuant to State Guidelines, Section 15303.

Please acknowledge your agreement to the foregoing terms and conditions as indicated below and return same to John B. Crayton, Property Agent at M.S. 51A.


Peter R. Soderquist
Deputy Director/Airports

PRS:JBC:sb(8)

Enclosure

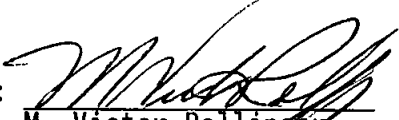
APPROVED AS TO FORM AN LEGALITY THIS 8 DAY OF May, 1992.


Deputy City Attorney

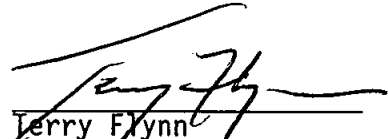
THE ABOVE IS ACKNOWLEDGED AND AGREED TO:

By: 
James L. Spotts
Property Director

Date: 4/2/92

By: 
M. Victor Rollinger
Engineering & Development

Date: 5-1-92

By: 
Terry Flynn
General Services Director

Date: 5/5/92

EXEMPTION VERIFIED


DEP

MONTGOMERY FIELD

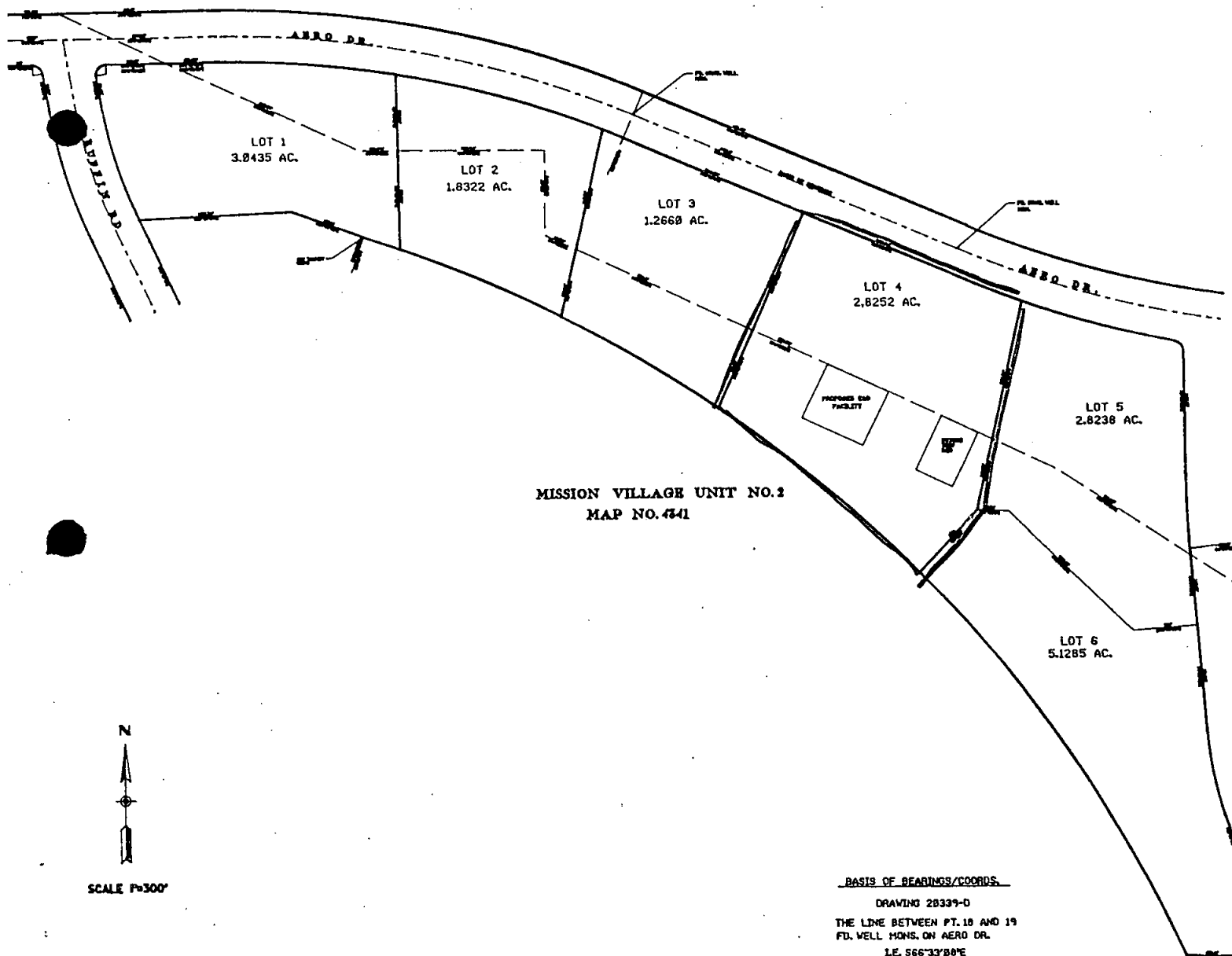
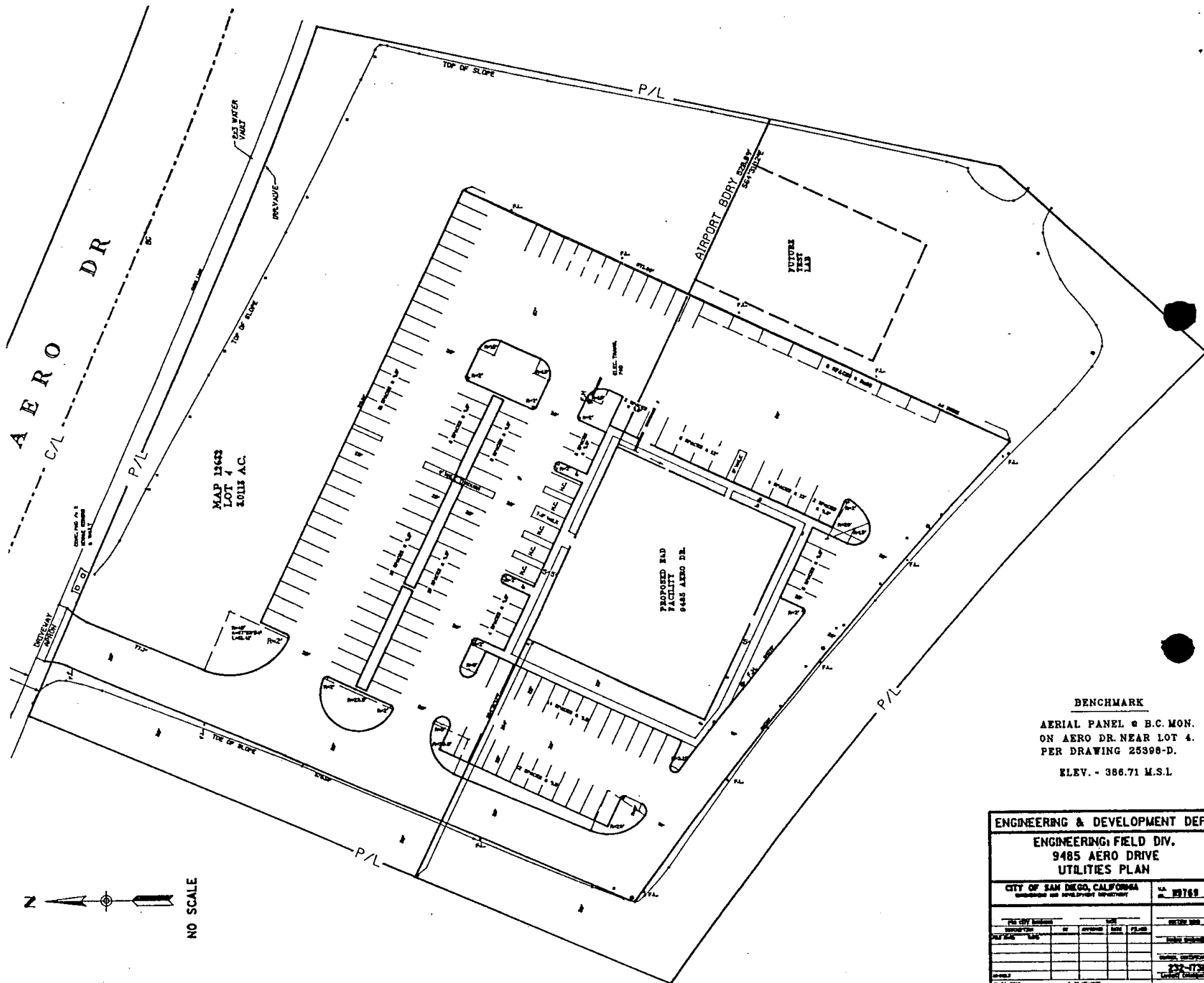
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EXHIBIT B



BENCHMARK
AERIAL PANEL @ B.C. MON.
ON AERO DR. NEAR LOT 4.
PER DRAWING 25398-D.
ELEV. - 386.71 M.S.L

ENGINEERING & DEVELOPMENT DEPT.				
ENGINEERING FIELD DIV.				
9485 AERO DRIVE				
UTILITIES PLAN				
CITY OF SAN DIEGO, CALIFORNIA				DATE: 09/16/88
ENGINEER: [Signature]				REVIEW: [Signature]
CHECKED: [Signature]				DATE: 09/16/88
PROJECT: 253-1724				PROJECT: 253-1724
SHEET: 1 OF 1				SHEET: 1 OF 1