

DUPLICATE

THE CITY OF SAN DIEGO

and

Air 88, Inc.

Twenty-Year Flat Rate Lease

Commencement Date

6/1/96

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CITY OF SAN DIEGO

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STANDARD & SPOONER

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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and AIR 88, INC., a California corporation, d.b.a. CROWNAIR, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as Lease Lots 5A and 9 and a portion of City Building 127, Montgomery Field Airport, delineated on Exhibit "A" and described, in Subsection 10.01 herein, attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of aircraft engine and airframe repairs, sales and renting of aircraft, sales and renting of aircraft parts and accessories, flight instruction, renting aircraft hangars, renting aircraft tiedowns, operating an aircraft charter and flight service, sale of aviation fuel and oil, operation of a service line operations center and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any

loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of approved uses in 1.2 Uses herein and related activities in a fiscally responsible manner.
- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 10.5, Schedule of Days and Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.8 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be comparable to charges for similar services in San Diego County. However, LESSEE shall not be required to sell merchandise or services at a loss.
- 1.9 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.10 Parking. LESSEE'S vehicles shall be restricted to designated parking area shown on Exhibit "A".

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be twenty (20) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Right to Extend. Provided that LESSEE is not in default of this lease, LESSEE has the right to extend this lease once for an additional term of (10) ten years, subject to CITY updating the rent and any lease terms and conditions by lease amendment as deemed appropriate by the City Manager: all other original agreements, considerations, covenants, and conditions shall remain the same.

To exercise this right, LESSEE must give CITY written notice no sooner than fourteen (14) months and no later than twelve (12) months before the date on which this lease expires. Within four (4) months immediately thereafter, CITY shall submit a copy of the lease amendment stating the proposed changes to the lease for LESSEE'S review and approval. If CITY and LESSEE are unable to mutually agree on the terms of the lease amendment within six (6) months prior to the scheduled lease termination date then neither party shall be obligated to extend the lease term.

As a prerequisite to CITY granting this lease term extension, LESSEE shall complete improvements required in Section 10.3, I.E. herein.

- 2.4 Surrender of Premises. Notwithstanding Section 6.10 Ownership of Improvements and Personal Property, herein, at termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises.

SECTION 3: RENT

- 3.1 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. The initial monthly rent is Nine Thousand, Two Hundred, Thirty-three Dollars and Thirty-three Cents (\$9,233.33). This initial rent is based on Six Hundred, Twenty-five dollars (\$625) per acre of land and One thousand, One Hundred, Eighty-three and Thirty-three Cents (\$1,183.33) for Building 127. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and any additional rent charged by City on the improvements that become its property on October 1, 2015, at its option, as hereinafter provided. OL

- 5/30/01, 12/01/03
- b. (1) CPI Index Adjustments. At the end of the fifth year following the effective date of ~~the~~ lease and at seven and one-half (7-1/2) years following said effective date and at the end of every two and one-half (2 1/2) years thereafter during the lease term, the rent shall be adjusted to reflect increases or decreases in the Consumer Price Index (CPI). OL

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- c. On October 1, 2015, CITY shall further increase the rent based on the market rent for any improvements it accepts ownership of on that date, as further described in Paragraph 6.10, Ownership of Improvements and Personal Property, herein. The initial rent charged by CITY for said improvements and Personal Property shall be established by mutual agreement between LESSEE and CITY within 90 days prior to transfer of ownership to CITY, based on a staff survey of rents charged for similar properties at other general aviation airports

within 100 miles of the premises. In the event LESSEE and CITY cannot mutually agree upon the initial rent for said improvements, then the market rent shall be established by a current appraisal performed by a California licensed appraiser, selected by CITY and performed at its cost. The rent on said improvements shall be adjusted periodically thereafter by CPI adjustments, as described in 3.3 b. herein.

- d. Other Method for Adjusting Rents. CITY and LESSEE herein agree that if after this lease commences, the CITY establishes a new method of adjusting rents for long-term aviation leases, either to replace the C.P.I. Index Method or to be used in conjunction with the C.P.I. Index Method, CITY shall apply the new rent adjustment method in calculating all future rent adjustments upon receipt of a written request so stated from LESSEE.

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.4 Rent Credit. CITY shall issue a rent credit not to exceed Three Thousand Dollars (\$3,000) to LESSEE for all or a portion of LESSEE'S actual costs to perform the improvements contained in the approved General Development Plan. All work must be performed to the satisfaction of the CITY'S Airport's Property Manager.
- 3.5 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.
- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.7, Additional Consideration to CITY, hereof, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other

security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day (30) period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day (30) period may be extended during such time as mortgagee or beneficiary pursues said cure with

reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day (30) period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease

operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

- 4.6 Control by Specified Individuals or Entities. The corporation named herein as LESSEE shall remain owned and controlled by GLF Corporation and at least to the extent of fifty-one percent (51%) of the issued stock of said corporation; GLF shall remain owned and controlled by Giorgio Cagliero and at least to the extent of fifty-one percent (51%) of the issued stock of said corporation; shall, as executive, actively administer and supervise the business enterprise operated on the premises. Provided, however, in the event that any of the above-named persons shall become incapacitated, then the other(s) shall continue in such active administration and supervision. In the event all parties are incapacitated, then the stockholders shall select an experienced manager acceptable to CITY to so administer and supervise the lease operations. Sale or transfer of stock or divestment of any interest in said corporation by the above-named persons in excess of fifty percent (50%) shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment and Subletting, and Section 4.7, Additional Consideration to CITY, hereof; provided, however, that the stock of any stockholder may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease as an assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.7 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of airport areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent airport areas. Therefore, LESSEE and CITY agree that in the event of an assignment; in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgement from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

4.8 MBE/WBE Assignment. LESSEE acknowledges that it is CITY policy to encourage Minority Business Enterprise/Women Business Enterprise (MBE/WBE) involvement in CITY contracts and leases and that a public purpose is served thereby. If LESSEE proposes to assign this lease to a non-MBE/WBE buyer, LESSEE agrees to first use due diligence in finding a qualified MBE/WBE assignee. LESSEE shall fulfill this requirement to use due diligence by doing all of the following:

- a. LESSEE, at its expense, shall advertise the proposed sale of the leasehold in at least one issue each of three different minority/women-focus publications of general circulation. The publications shall be approved by the City Manager, and City

Manager shall provide a list of such publications to LESSEE upon request. The ads may be either display or classified and shall state that LESSEE desires to locate a qualified MBE/WBE buyer. The ads shall also request respondents to register their interest with a designated employee of CITY. Affidavits of publication shall be furnished to the City Manager.

- b. LESSEE shall allow no fewer than twenty (20) calendar days from the date of publication for interested parties to respond. Any offers from prospective MBE/WBE buyers shall be presented in writing to CITY for review, together with LESSEE'S reason(s) for accepting or rejecting the proposal.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

- 5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - (1) Public liability and property damage insurance in the amount of not less than Ten Million Dollars (\$10,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover One Hundred Percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
 - (3) Hangar Keeper's Insurance. Hangar Keeper's Insurance sufficient to cover replacement cost and aircraft

hangared for others.

- (4) Aircraft Liability. General Aircraft Operation Liability, in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the

proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

- 5.4 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum equal to one month's rent of Eight Thousand, Six Hundred, Sixty-Six Dollars and Sixty-Seven Cents (\$8,666.67) on or before the commencement date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants, and conditions of this lease.

The security deposit shall take one of the forms set out below:

- a. Cash. Cash deposits shall be deposited with CITY, and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.
- b. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved by CITY.

LESSEE will maintain the required security deposit throughout the lease term and for ninety (90) days thereafter unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security deposit or any balance thereof will be returned to LESSEE within ninety (90) days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants, and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.12, Development Plan, hereof and with all applicable laws. CITY does not guarantee the working condition of the existing heater or air conditioner.

6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.

Notwithstanding the previous paragraph of section 6.5 above, LESSEE shall reimburse CITY for a portion of CITY'S costs for utilities for services at 3750 John J. Montgomery Drive (Airport Terminal Building), in accordance with the terms of Exhibit "B" herein, because a portion of the premises and the Airport Terminal Building are connected to the same utility services. The utility reimbursement fees paid CITY shall be paid by LESSEE in addition to rents, other fees and expenses required of LESSEE by this lease agreement.

If LESSEE obtains separate utilities and service for all of the premises and pays for all services for the premises, then LESSEE shall not longer be required to pay CITY the utility reimbursement fees.

6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of One Hundred Percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons

seeking relief under the lien.

- 6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.
- 6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.
- 6.10 Ownership of Improvements and Personal Property.
- a. On October 1, 2015 all buildings, including hangars, built on the premises prior to January 1, 1995 shall, at City's option, become the property of the CITY. Any and all other improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
 - b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
 - c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect

immediately prior to said expiration or termination.

- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The basic improvements of the development plan are shown on Exhibit 10.3, General Development Plan. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.
- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the

public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

Notwithstanding the above, LESSEE shall not be responsible for any toxic waste or hazardous substance disposed of or discharged on the premises prior March 25, 1994 when the current stockholders of Air 88, Inc. took possession of the premises.

- 6.14 Failure to Meet Development Schedule. Should LESSEE fail to complete construction in accordance with the schedule of development of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that CITY will be entitled to damages in the amount of Fifty Dollars (\$50) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefor. In the event that construction is not completed within twelve (12) months following the date specified for completion in the Development Plan, CITY may, at its option, may terminate this lease. The City Manager, in his sole discretion, may approve an extension to the development schedule of up to one (1) year without further City Council approval.
- 6.15 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code

Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises, except asbestos present in City-owned structures prior to commencement of this lease agreement.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/service provider listed in the report.
- b. Equal Employment Opportunity. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive

Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to the inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

- c. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself.

Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
 - c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.
- 7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.15 Landscaping. Within one-year following commencement of this lease, LESSEE shall install landscaping on its premises in accordance with 6.12 Development Plan herein and the CITY'S approved Landscaping Plan for Montgomery Field.
- 7.16 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.17 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 9th day of January, 1989 with Air 88, Inc., a California Corporation, d.b.a. CROWNAIR, Document RR-272626, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.18 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 7.19 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the

infestation of noxious weeds, pests, and erosion throughout the entire leased premises.

- 7.20 No Warranty. CITY does not warrant that the premises are suitable for the purposes for which they are leased as stated herein.
- 7.21 Cutting of Trees. No growing or mature trees are to be destroyed or removed without prior written consent of the City Manager; provided, however, trees that are encroaching into drainage channels or onto productive farmland shall be removed (subject to and in accordance with all applicable laws) in a timely manner by LESSEE. Trees growing along roadways may be trimmed back as required by LESSEE.
- 7.22 Hold Harmless, Flood Damage and Other Acts of God. LESSEE understands and agrees that the leasehold area is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY, and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or release water from reservoirs in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes.

SECTION 8: AIRPORT PROVISIONS

- 8.1 LESSEE Use to Conform with Law and Other Rules. LESSEE is granted the nonexclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under LESSEE'S or its sublessee's control. LESSEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.
- 8.2 LESSEE Use and Construction to Conform with Federal Aviation Regulations. LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. LESSEE 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.
- 8.3 LESSEE'S Noninterference with Aircraft. LESSEE and LESSEE'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 Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to enter the premises and abate or eliminate the interference at the expense of LESSEE.
- 8.4 Lease Subordinate to CITY-United States Agreements. This lease 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.

- 8.5 Height Limitation. LESSEE and LESSEE'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 five hundred and thirty-four (534) feet. If this covenant is breached in any way, CITY reserves the right to enter the premises and remove the structure, object, or tree, at the expense of LESSEE.
- 8.6 Right of Flight Easement. CITY 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 Airport.
- 8.7 War or National Emergency. In the event of war or national emergency, this lease 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 Airport.
- 8.8 Airport Development. CITY reserves the right to further develop, change or improve the airport and its routes and landing areas as CITY sees fit, without LESSEE interference or hindrance and regardless of LESSEE'S views and desires.
- 8.9 Nonexclusive Right. LESSEE understands and agrees that nothing in this lease 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).
- 8.10 Landing Area Maintenance. CITY reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of these facilities.
- 8.11 FAA Nondiscrimination Covenant.
- a. LESSEE and LESSEE'S representatives, successors, sublessees and assigns agree, as part of the consideration that:
 - (1) 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.
 - (2) 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.
 - (3) LESSEE 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.

- b. If any of the provisions are breached, CITY may terminate the lease and reenter and repossess the premises as if this lease 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.
 - c. LESSEE 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. LESSEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If LESSEE does not comply with this provision, CITY has the right to terminate this lease agreement, without liability, or either CITY or the United States may judicially enforce this entire covenant.
 - d. LESSEE agrees to include the entire covenant in any sublease or lease agreement by which LESSEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the leased premises.
- 8.12 Equal Opportunity. LESSEE, LESSEE'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 insure 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.
- 8.13 CITY to Mitigate Impacts of Subordination. If subordination agreements between CITY and United States of America result in LESSEE'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, CITY agrees to make a reasonable rental reduction or adjustment, as determined by CITY. LESSEE agrees that any damages claimed during this subordination period will be limited to this rental relief.
- 8.14 CITY to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between CITY and the United States of America result in LESSEE'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, CITY, upon written request from LESSEE, will terminate this lease or extend the term of this lease for the period of time that LESSEE'S operation is affected, and no rent shall accrue during any period of inoperation.
- 8.15 Licenses and Certifications. LESSEE 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 CITY then has the right to terminate the lease without liability.
- 8.16 Employee Conduct. LESSEE shall be responsible for the conduct of any employee on the entire property, if that employee is on airport property during any period of employment.
- 8.17 Aircraft Parking. LESSEE shall require that all aircraft under its control be parked only on the leased premises, except as otherwise

provided by the direction of the City's Airport Manager. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE'S control, be allowed to obstruct any designated taxiways.

- 8.18 Minority Business Policy. If LESSEE receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and LESSEE'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.

- 8.19 Noise Abatement. CITY airports are severely impacted by noise; therefore, LESSEE shall comply at all times with all airport noise abatement rules and regulations ("Noise Abatement Program") as may be applicable to LESSEE'S use of CITY-owned airports and this lease. Current information on the Noise Abatement Program for CITY airports may be obtained at CITY'S Airport Noise Abatement Office.

It is CITY'S intent to take whatever action is necessary to enforce its Noise Abatement Program. This may include fining violators and/or terminating their use of the airport. LESSEE shall fully cooperate with CITY in its enforcement of its Noise Abatement Program with users of the leased premises, including providing CITY with any information it has in its records that would assist the CITY in identifying and locating those that violate the Airport's Noise Abatement Program.

- 8.20 Addendum I. In addition to the rent being adjusted by the CPI method, as further described in Section 3.2 Rent above, the rent shall be further adjusted in accordance with the terms of Section 10.6 Addendum I, herein, which by this reference is made part of the lease agreement. 62

SECTION 9: SIGNATURES

9.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 5/13/96

By Robert J. Callum
Real Estate Assets Manager

Date 9/7/95

LESSEE:
By [Signature]
By _____

APPROVED as to form and legality this 15 day of May, 1996.

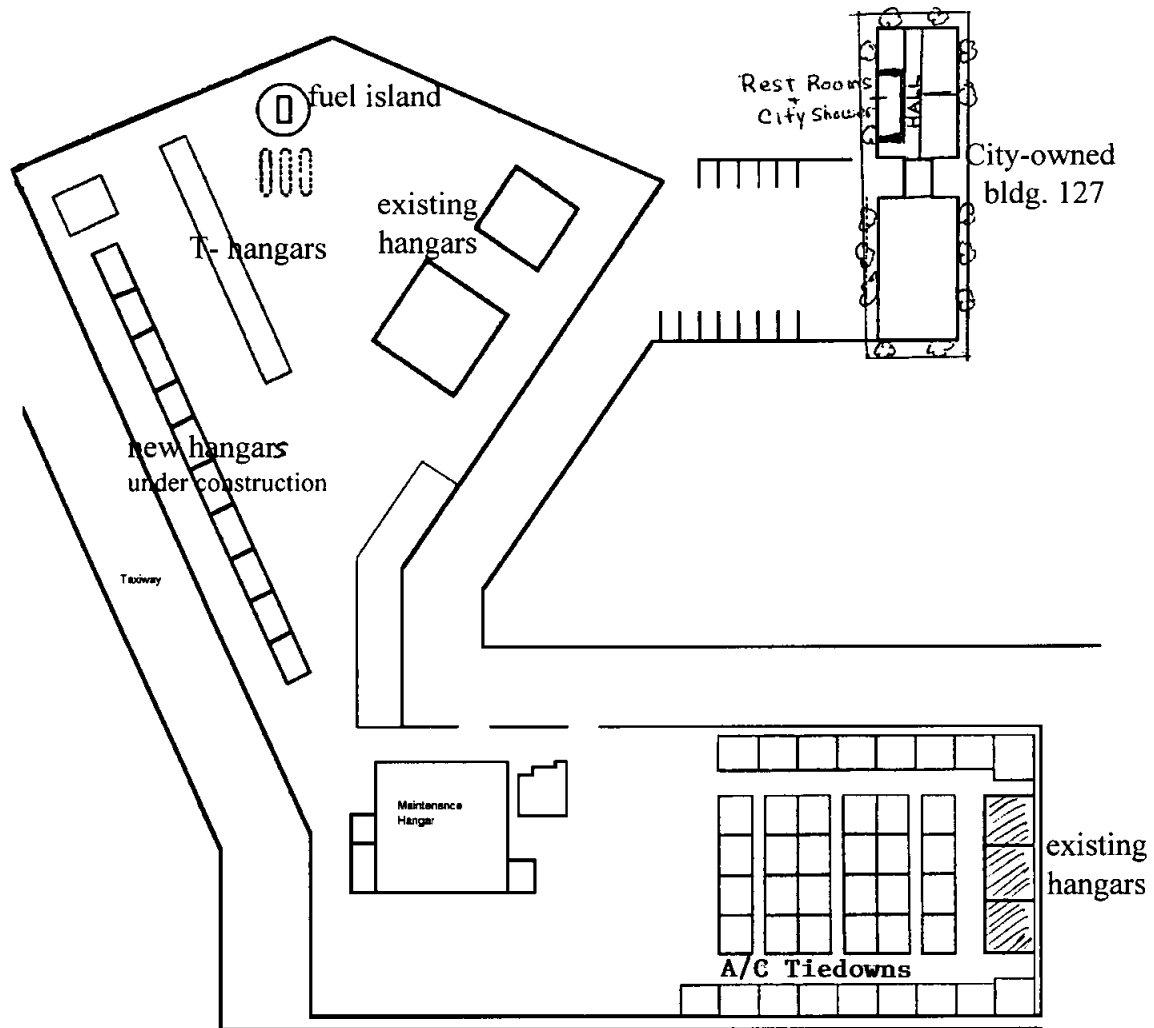
JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

DLD:dlc:(1)
08-28-95

10.1 Description of Premises Exhibit "A".

Exhibit A



LEASED PREMISES

Lots 5A & 9 (12.8 Acres)

Portion BLDG 127 (Apx. 1,500sq.ft.)

10.2 Utility Reimbursement Fees Exhibit "B"

On the first day of each month LESSEE shall pay CITY, in addition to its rent payments, utility reimbursement fees equal to 1/12th of 6% of the total gas and electric bills, plus 15% the total water bills paid by CITY on metered service at 3750 John J. Montgomery Drive for the previous one-year period covering approximately June 15 through May 15th. The utility reimbursement fee shall be adjusted by the CITY on the first day of June 1, 1996 and on the first day of June each year thereafter during the lease term, based on the total cost of the utility bills for the 12th month period preceding the adjustment date.

CITY may on the annual adjustment dates either increase or decrease the percentages of utility costs charged LESSEE if there is a substantial change in uses of the current services that would, in the opinion of the CITY'S Airport Property Manager, substantially change the portion of costs attributable to LESSEE'S use of the utilities.

The initial utility reimbursement fees are based on the following intended uses:

Building 127: LESSEE'S offices and flight line, public restrooms and a CITY emergency shower; gas wall heater, two air conditioners,

Building 126: A restaurant, offices four public restrooms, a lighted information system, two City conference rooms, lunch room, miscellaneous vending machines and lighting. Gibbs fuel island, City's storage sheds and airport lighting system also being connected to the subject electrical service.

The total monthly utility reimbursement fee (for water/sewer, gas & electric) for the period beginning with commencement of the lease agreement to June 1, 1996 is \$273.51, which was calculated in the example shown below:

EXAMPLE OF ADJUSTMENT CALCULATIONS FOR UTILITY REIMBURSEMENT FEE:

Part One: water/sewer services = $\frac{\$5,213.39}{12}$ yr, = \$434.45 mo. average

Lessee's percentage of use: $15\% \times 434.45 = \$65.16$ per month

Part Two: gas & electric service= $\frac{\$41,670.86}{12}$ yr. = \$3472.57 mo. average

Lessee's percentage of use $6\% \times 3,472.57 = \$208.35$ per month

Total monthly reimbursement fee: \$273.51 ($65.16 + 208.35$)

Note: The annual costs used in this example for calculating the initial monthly fee were obtained by original copies of water/sewer bills on file with the CITY and the gas & electric was obtained from a computer printout provided by SDG&E.

10.3 General Development Plan.

The approved General Development Plan (Plan) shall be submitted to CITY prior to execution of this lease agreement, except for Item "E" below, which shall be submitted by the end of the 15th lease year. The General Development Plan shall be filed in the office of the City Clerk and referenced to this lease. The Plan consists of the following:

I. Description of all new improvements to be constructed

- A. Development Plan for nine additional executive, aircraft storage hangars, all with electricity, plus a minimum of four with office space and plumbing. Completion deadlines: one hangar per calendar year commencing with 1996)
- B. Improvements to City-owned Building 127-Flight Line
Completion deadline: by 2/1/96)
- C. Security Gates at street entrances to LESSEE's ramp area
Completion deadline: Within 60 days after City installs the security fencing for the gates
- D. Landscaping Plan in accordance with the Montgomery Field Airport Landscaping Plan Completion deadline: by 1/1/97
- E. In addition to the maintenance and other development required by LESSEE herein, LESSEE shall install an additional \$100,000 in additional new improvements on the premises or remodel and upgrade existing improvements, as a prerequisite for City extending the lease term as provided in Section 2.3 Right to Extend. herein. Prior to the end of the 15th lease year LESSEE shall submit a General Development Plan for these improvements for approval by CITY'S designated Property Manager. Completion date: by the end of the 19th lease year.

II. Phased Development Schedule in accordance with the deadlines stated herein.

III. Itemized Cost Estimates

Note: All costs for development, improvements and maintenance shall be borne by LESSEE unless otherwise specifically exempted herein.

10.4 Corporate Name.

AIR 88 INC. DBA: CROWN AIR
CORPORATE NAME

I, MARTHA C. LOUTZENHISER, certify that I am the ASST. SECR./TREASURER of the corporation named in the attached agreement; that Giorgio Cagliero, who signed this agreement on behalf of the corporation, was then President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on SEPTEMBER 7, 1995, and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of said corporation.

By Martha C. Loutzenhiser

CORPORATE SEAL

Name GIORGIO CAGLIERO, PRES.
Title

Name LAURA CAGLIERO, SECR.
Title

Name LAURA CAGLIERO, TREAS.
Title

Name MARTHA LOUTZENHISER
Title
ASST. SECR./TREAS.

10.5 Schedule of Days and Hours of Operation.

Open (7) seven days per week with the exception of the following holidays when the business shall be closed at LESSEE'S discretion:

1. New Years Day
2. Easter
3. Fourth of July
4. Memorial Day
5. Labor Day
6. Thanksgiving
7. Christmas Day

If any of the above holidays fall on a weekend the previous Friday or the following Monday shall be observed.

Hours of Operation:

Office and Maintenance Shop: 8:00 a.m. to 5:30 p.m.

Flight Line 7:30 a.m. to 4:30 p.m.

Self-Serve Fuel Island - 24 hours

Emergency Service: On call 24 hours. LESSEE shall provide City Airport Manager with the current home phone number of its Maintenance Manager and the owner to respond to emergencies on the airport. Emergency Services shall mean situations on the airport that will severely interfere with airport operations or public safety that cannot reasonable wait until LESSEE'S normal hours of operation to be resolved due to safety issues.

ADDENDUM I

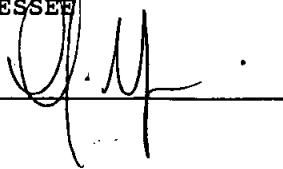
Market Value Adjustments. In addition to said CPI adjustments, at the end of the tenth year following the effective date of this agreement and at the end of each ten-year period thereafter, the rent for the ensuing ten years, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent, as established by periodic appraisals as provided for herein, be less than the rent in existence immediately prior to the adjustment date.

AIR 88, INC., LESSEE

APPROVED BY: _____



DATE: _____

3/22/96

(O-96-139)

ORDINANCE NUMBER O- 18298 (NEW SERIES)

ADOPTED ON MAY 06 1996

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A 20-YEAR LEASE AGREEMENT, WITH ONE
TEN-YEAR OPTION TO EXTEND, WITH AIR 88, INC.
FOR PROPERTY AT MONTGOMERY FIELD AIRPORT

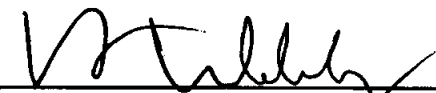
BE IT ORDAINED, by the Council of The City of San Diego, as
follows:

Section 1. That the City Manager is hereby authorized to
execute, for and on behalf of The City of San Diego, a 20-year
lease agreement, with one ten-year option to extend, with AIR 88,
INC., for property at Montgomery Field Airport, at an initial
annual rent of \$110,800, under the terms and conditions set forth
in that lease agreement on file in the office of the City Clerk
as Document No. OO- 18298.

Section 2. This ordinance shall take effect and be in force
on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
03/15/96
Or.Dept:REA
Job:252131-001
O-96-139
Form=o+t

Passed and adopted by the Council of The City of San Diego on
MAY 06 1996 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS,
MCCARTY, VARGAS, MAYOR GOLDING

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: *Lori A. Duhon*, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18298 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on APR 15 1996 and on MAY 06 1996.

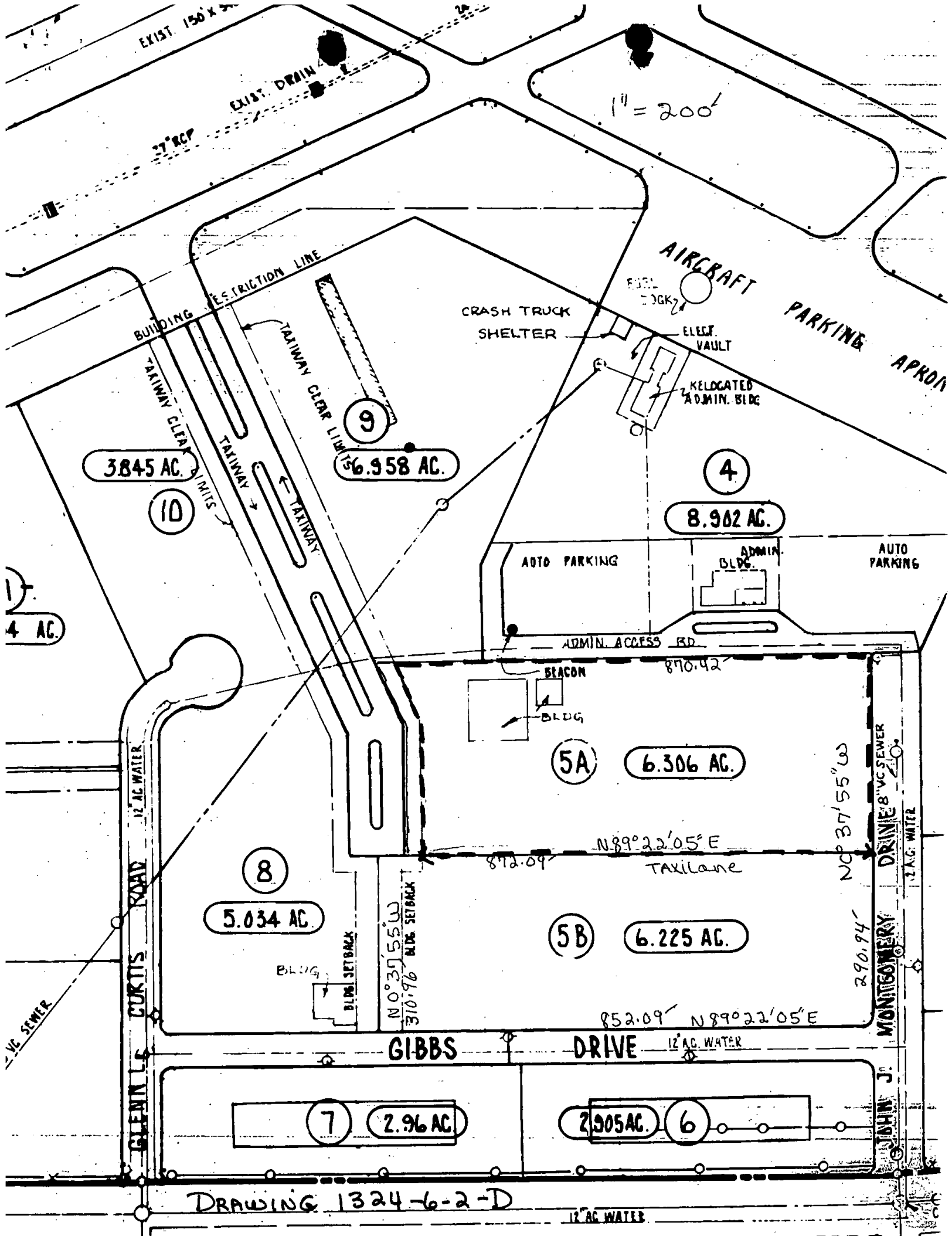
I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: *Lori A. Duhon*, Deputy



DRAWING 1324-6-2-D

(O-96-139)

ORDINANCE NUMBER O- 18298 (NEW SERIES)

ADOPTED ON MAY 06 1996

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A 20-YEAR LEASE AGREEMENT, WITH ONE
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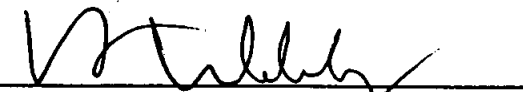
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on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
03/15/96
Or.Dept:REA
Job:252131-001
O-96-139
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The City of San Diego

Stew
200

MANAGER'S REPORT

DATE ISSUED: April 10, 1996

REPORT NO. 96-73

ATTENTION: Honorable Mayor and City Council, Agenda of
April 15, 1996

SUBJECT: Air 88, Inc. d.b.a. Crownair.
20-Year, Flat-Rate Lease, MYF

REFERENCES: CMR 93-124 dated April 26, 1993
Council Policy 700.15 (06/26/95)

SUMMARY

Issue - Should the City Council authorize the City Manager to execute a 20-year flat-rate lease, with an additional ten-year option with Air 88, Inc. for property at Montgomery Field Airport?

Manager's Recommendation: Authorize the City Manager to execute the lease.

Other Recommendations: - None.

Fiscal Impact: - Initially, The Airports' Enterprise Fund shall receive \$110,800 annual rent revenues, minus a one-time rent credit of \$3,000 in the first year. The rent revenue will be adjusted periodically thereafter to reflect changes in the CPI or as indicated by an appraisal.

BACKGROUND

In 1993, Council authorized the City Manager to convert its percentage leasing policy for aviation leases to a flat-rate rent basis, as the opportunity presented itself. Subsequently, Council Policy was adopted instructing the City Manager to "provide conditions where aviation service businesses can earn a reasonable profit." This lease accomplishes both of these directions from Council.

Air 88, Inc. (LESSEE) has been a successful full-service, fixed-base operator at its current leasehold at Montgomery Field for more than twenty years: it employs 33 employees. In 1988, the City executed a 25-year lease with Lessee for 12.8 acres and a portion of Building 127. In early 1994, all stock in Air 88 was sold and the lease assigned to the current owner, with City's authorization. The current owner has made major improvements in the operation and marketing of Air 88.

Through these efforts, Lessee persuaded Corporate Helicopters of San Diego (Sublessee) to relocate a portion of their operation from Lindbergh Field to Air 88's leasehold last year. Lessee also executed a sublease agreement with an established aircraft sales company, which intends to relocate to the leasehold, contingent upon approval of this lease. The detriments to attracting new businesses to Montgomery in the past have been the percentage rent basis and the lack of facilities to accommodate new businesses. This lease will help alleviate these problems by converting the rents to a flat-rate basis and allowing Lessee to develop new executive hangars.

DISCUSSION

Lessee now wishes to replace its current long-term percentage lease with a 20-year flat-rate lease, with Lessee's option to extend the term an additional ten-years, in accordance with current City leasing policy.

There is currently an unmet demand for hangars at Montgomery Field. In response to this demand, and in accordance with the lease agreement, Lessee will construct a total of ten new executive storage hangars, at a total cost of approximately \$600,000, which will be suitable for aircraft storage or aviation businesses. Four of these hangars have been completed and sold to date. Ownership of the improvements transfers to the City at a later date.

Basic Lease Terms and Conditions:

Rent: The initial rent is \$110,800 for the first five years, which is the average of actual rents received by City from the leasehold over the last three years.

Utility Reimbursements: The utilities were previously included in the rent. Now Lessee shall pay rent, plus cost of utilities.

Rent Credit: Lessee will be spending several thousand dollars of its own funds to remodel Building 127, North. This section of the building was previously occupied by City staff and it still contains public hallways, public restrooms and the City's required emergency shower. All except the City's shower will be cleaned and maintained by Lessee, resulting in a substantial savings to City over the lease term. The City shall issue a \$3,000 rent credit toward Lessee's costs for repairs, including: replacing an inoperative wall heater; remodeling public restrooms; painting public area; cleaning, patching, painting and carpeting offices previously occupied by City staff. This is a portion of the cost the City would normally incur to repair the restroom and prepare the area for leasing.

Rent adjustments: At the end of the fifth year and every two and one-half years thereafter by CPI adjustments. At the end of each ten year period the rent shall be further adjusted by appraisal. In 2015, City will increase the rent to include improvements transferring to its ownership at that time. The initial rent for the option period shall be increased to market rent as determined by appraisal or survey, and adjusted thereafter by changes in the CPI.

Security deposit: Equal to one month's rent.

Term: 20 years; if lessee is in compliance with its lease, it may exercise its option to extend the lease an additional ten years.

Development: Lessee shall invest a total of approximately \$650,000 of its own funds to construct hangars, remodel Building 127, install security gates and landscape the premises in accordance with the Airport's Security and Landscaping Plans.

Additional Improvements required for 10-year option to extend lease term:

As a prerequisite to Lessee exercising its option to extend the lease term for the additional ten years, it must have satisfactorily completed construction of an additional \$100,000 in improvements.

Ownership of Improvements: Existing improvements, other than new hangars, become property of City, at its option, on October 1, 2015. The remainder of the improvements and future improvements revert to City, at its option at expiration of the new lease term.

Other: The Lease requires adequate insurance coverage and it contains all the other applicable standard lease terms and conditions.

CONCLUSION By Council approving the City Manager's execution of this lease agreement, the City will be able to retain an excellent tenant, receive long-term market revenues, allow further development of the premises and provide an environment that can attract new businesses to the airport.

ALTERNATIVES

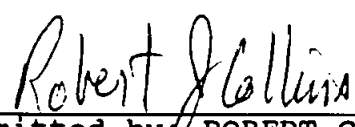
1. Approve the lease agreement with different terms.
2. Do not approve the lease agreement.

Respectfully submitted,


APPROVED: GEORGE LOVELAND
Deputy City Manager

CC:GIL:RJC:PRS:dld

c:1472air8


Submitted by: ROBERT COLLINS
Real Estate Assets Manager
(236-6144)

Air P & Legal

10.2 Utility Reimbursement Fees Exhibit "B"

On the first day of each month LESSEE shall pay CITY, in addition to its rent payments, utility reimbursement fees equal to 1/12th of 6% of the total gas and electric bills, plus 15% the total water bills paid by CITY on metered service at 3750 John J. Montgomery Drive for the previous one-year period covering approximately June 15 through May 15th. The utility reimbursement fee shall be adjusted by the CITY on the first day of June 1, 1996 and on the first day of June each year thereafter during the lease term, based on the total cost of the utility bills for the 12th month period preceding the adjustment date.

CITY may on the annual adjustment dates either increase or decrease the percentages of utility costs charged LESSEE if there is a substantial change in uses of the current services that would, in the opinion of the CITY'S Airport Property Manager, substantially change the portion of costs attributable to LESSEE'S use of the utilities.

The initial utility reimbursement fees are based on the following intended uses:

Building 127: LESSEE'S offices and flight line, public restrooms and a CITY emergency shower; gas wall heater, two air conditioners,

Building 126: A restaurant, offices four public restrooms, a lighted information system, two City conference rooms, lunch room, miscellaneous vending machines and lighting. Gibbs fuel island, City's storage sheds and airport lighting system also being connected to the subject electrical service.

The total monthly utility reimbursement fee (for water/sewer, gas & electric) for the period beginning with commencement of the lease agreement to June 1, 1996 is \$273.51, which was calculated in the example shown below:

EXAMPLE OF ADJUSTMENT CALCULATIONS FOR UTILITY REIMBURSEMENT FEE:

Part One: water/sewer services = $\frac{\$5,213.39}{12}$ yr, = \$434.45 mo. average

Lessee's percentage of use: $15\% \times 434.45 = \$65.16$ per month

Part Two: gas & electric service= $\frac{\$41,670.86}{12}$ yr. = \$3472.57 mo. average

Lessee's percentage of use $6\% \times 3,472.57 = \$208.35$ per month

Total monthly reimbursement fee: \$273.51 ($65.16 + 208.35$)

Note: The annual costs used in this example for calculating the initial monthly fee were obtained by original copies of water/sewer bills on file with the CITY and the gas & electric was obtained from a computer printout provided by SAG&E.

**REVOKABLE 60-DAY
NON-EXCLUSIVE USE PERMIT
FOR CITY PROPERTY**

This Revokable, 60-Day Non-exclusive Use Permit is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, herein called "CITY" and AIR 88, INC., herein called "PERMITTEE" for the purpose of allowing PERMITTEE non-exclusive 60-day use of a portion of Montgomery Field Airport, further described in Section 1. PREMISES below and delineated on Exhibit "A" hereof, with the following terms and conditions:

1. PREMISES: The premises shall consist of the CITY'S cargo ramp shown on Exhibit "A".
2. USE: PERMITTEE shall paint (delineate) tiedown spaces on CITY'S cargo ramp.
3. TERM: 60-day permit, commencing upon approval by CITY.
4. INDEMNITY: PERMITTEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with its use of the PREMISES, and all expenses of investigating and defending against same; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence, or willful misconduct of the CITY or any third parties, their agents, officers, or employees.
5. MANDATORY PRE-CONSTRUCTION MEETING: PERMITTEE'S contractor and its work crew must meet with the Airports Deputy Director before entering the premises. Contractor and workmen shall remain in the authorized work area at all times, and they shall not enter restricted areas on the airport under any circumstances.
6. INSURANCE: PERMITTEE or it's contractor, shall take out and maintain at all times during the term of this permit the following insurance at its sole expense, with the insurance policy naming the CITY as "additional insured":

Public Liability Insurance in the minimum amount of \$1,000,000 combined single limit liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by PERMITTEE or by its employees, agents or invitees on or in connection with the use or operation of the premises. PERMITTEE shall not be liable for any claims or liability arising from the negligence, or willful misconduct of the CITY, their agents, officers, employees or invitees. PERMITTEE accepts full responsibility for liability during construction period.

Worker's Compensation contractor to provide insurance coverage for workers during the

construction of the tiedowns on the airport.

7. DONATION. In accordance with Council Policy 100-02 all costs associated with Paragraph 2, Use, including materials and labor are donated free by PERMITTEE to CITY. CITY and PERMITTEE estimate the value of the donation is approximately (\$200) Two Hundred Dollars.

IN WITNESS HEREOF, this PERMIT AGREEMENT is executed by CITY acting by an through its City Manager and by PERMITTEE, acting by and through its lawful, authorized designee.

THE CITY OF SAN DIEGO

Date: 10 June 1996

By: [Signature]
City Airports Deputy Director

PERMITTEE: AIR 88, INC.

Date: 6/6/96

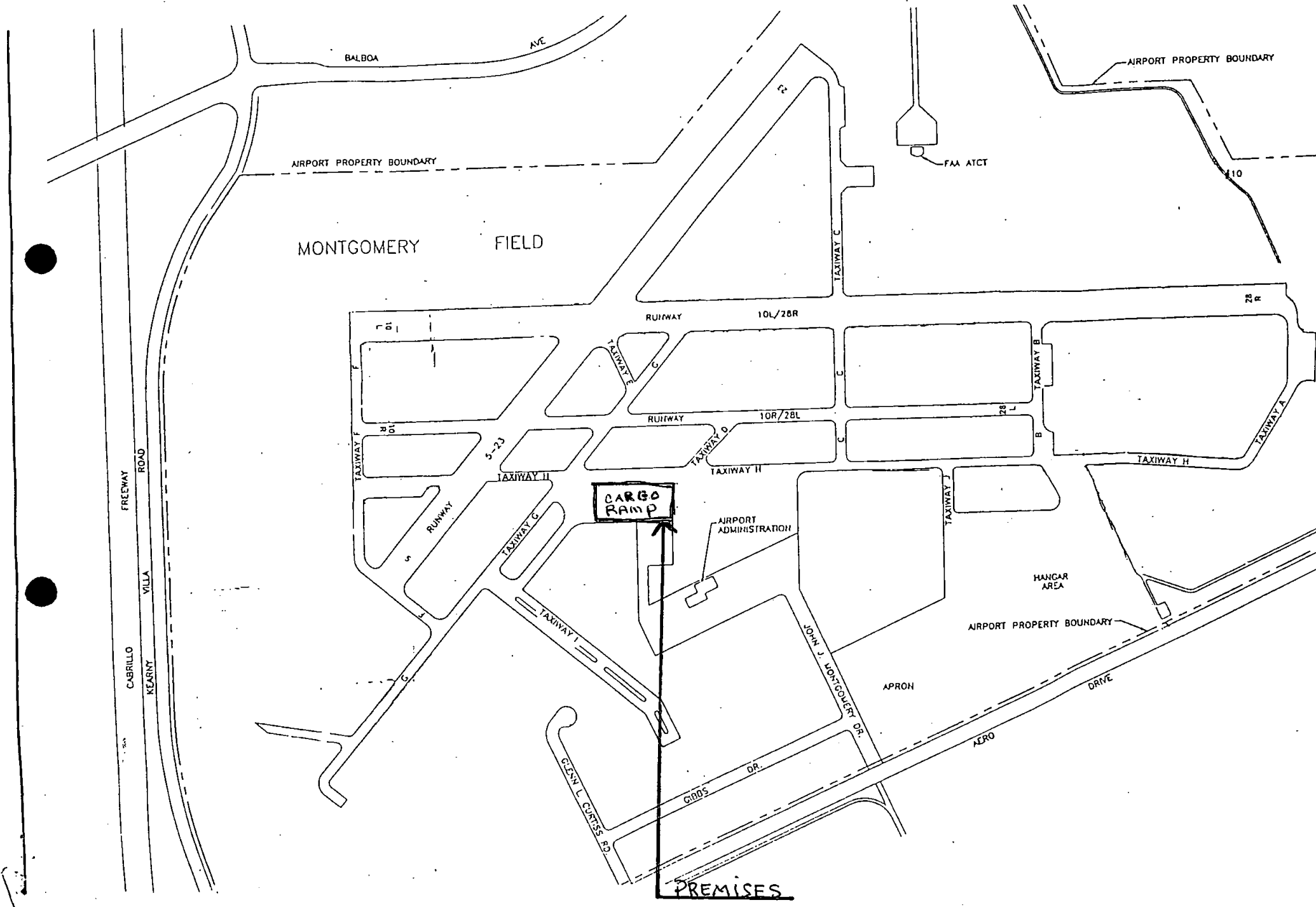
By: [Signature]

APPROVED as to form and legality this 4 day of June, 1996.

JOHN W. WITT, City Attorney

By: [Signature]
Chief Deputy City Attorney

EXHIBIT A



STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement is entered into as of this 21st day of February, 1994, at San Diego, California, by and between Giorgio Cagliero, an individual, address 4353 Citrus Dr., Fallbrook, California, 92028, or his assigns, hereinafter known as "Purchaser"; and, Jo Ann Blanton, an individual, address 3753 John J. Montgomery Dr., San Diego, California, 92123, and Niels K. Mikkelsen, an individual, address 3753 John J. Montgomery Dr., San Diego, California, 92123, hereinafter known as "Sellers".

RECITALS

WHEREAS, Sellers are the owners of One Thousand (1,000) Shares of Common Stock (with no par value) of AIR 88, INC., which represents 100% of the issued and outstanding stock of the corporation. AIR 88, INC. is a California corporation with its principal office at Montgomery Field Airport in San Diego, California.

WHEREAS, Purchaser desires to purchase and Sellers desire to sell all One Thousand (1,000) Shares of such Common Stock which constitute 100% of the issued and outstanding shares of Common Stock of AIR 88, INC. as of the date hereof.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, conditions and covenants set forth in this Agreement, the parties to this Agreement mutually agree as follows:

AGREEMENT

1. Sale and Purchase of Common Stock Shares:

Subject to the terms and conditions of this Agreement, Sellers agree to sell the Shares to Purchaser and Purchaser agrees to purchase the Shares from Sellers. On or before the closing date Sellers shall deliver the certificates evidencing the Shares against payment of the purchase price therefor as directed in Section 2 of this Agreement. The certificates will be properly endorsed for transfer to or accompanied by a duly executed stock power in favor of Purchaser and otherwise in a form acceptable for transfer

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on the books of AIR 88. Sellers will pay any taxes payable with respect to the transfer of the Shares.

2. The Purchase Price:

As consideration for the Shares, Purchaser shall pay to Seller the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), subject to adjustment, as follows:

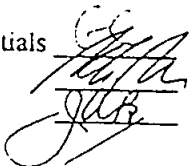
(a) On the date of execution of this Agreement by Purchaser and Sellers, Purchaser shall deposit in escrow the sum of Ten Thousand Dollars (\$10,000.00) to be credited to the purchase price. The balance of the purchase price will be paid by the Escrow Agent subject to the Escrow Instructions.

(b) On the date of final settlement, which will be on or before March 31, 1994, subject to the terms and conditions set forth herein Purchaser will instruct Escrow Agent to pay Sellers the sum of One Million Six Hundred-Forty Thousand Dollars (\$1,640,000.00) and deliver to Sellers an executed Promissory Note in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), plus interest at the rate of 7.5% per annum, payable in full at maturity in 90 days. Sellers will discount the Promissory Note Twenty Thousand Dollars (\$20,000.00) if the Purchaser pays the note in full within sixty (60) days.

(c) At final settlement Sellers will pay in full a Promissory Note to PS GROUP, INC. that is secured by the issued and outstanding Shares of AIR 88, INC. It is estimated the balance of this note will be approximately Four Hundred Ninety-nine Thousand Dollars (\$499,000.00) on the date of final settlement.

(d) At closing AIR 88, INC. will have assets including cash, equipment, resaleable parts and accessories, accounts receivable, pre-paid expenses, and a lease for the premises that will remain in full force and effect after the transfer of the Stock to Purchaser. The assets will total approximately One Million Seventy Thousand Dollars (\$1,070,000.00). The liabilities of the corporation will not exceed One Million Five Thousand Dollars (\$1,005,000.00), leaving the corporation with a net book value or Shareholders equity of Sixty-five Thousand Dollars (\$65,000.00), plus approximately Four Hundred Ninety-nine Thousand Dollars (\$499,000.00) in contributed capital and surplus as a result of the payment of the PS GROUP, INC. note by shareholders Blanton and Mikkelsen. (See Exhibit A: AIR 88, INC. Balance Sheet and Income Statement)

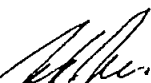
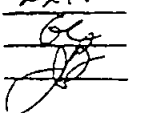
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amendments and supplements thereto, are included in "Exhibit D" to this Agreement. Such minute books fairly present all actions and proceedings taken to date by the respective shareholders, boards of directors and committees of AIR 88, INC., and such stock record books of AIR 88, INC. accurately reflect all transactions in the capital stock of AIR 88, INC. AIR 88, INC. is not a registered or reporting company under the Exchange Act.

(b) Authorization and Enforceability. Sellers have taken all action necessary for the authorization, execution, delivery and performance of this Agreement and the authorization, sale and delivery of the Shares, and the performance of all of their obligations hereunder has been taken or will be taken prior to the closing. Assuming due execution and delivery of this Agreement by Purchaser, this Agreement is a legal, valid and binding obligation of Sellers enforceable in accordance with its terms except, i) as Sellers obligations may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws, or by equitable principles relating to or limiting creditor's rights generally and, ii) that the remedies of specific performance, injunction and other forms of equitable relief are subject to certain tests of equity jurisdiction, equitable defenses and the discretion of the court before which any proceeding therefor may be brought.

(c) The Shares: Sellers own the Shares, which constitute 100% of the issued and outstanding Shares of Common Stock of AIR 88, INC., beneficially and of record. All of such Shares will be delivered to Purchaser free and clear of any Encumbrance. At closing Purchaser will acquire good and marketable title to and complete ownership of the Shares free and clear of any Encumbrance. The authorized capital stock of AIR 88 consists of One Thousand (1,000) Shares of Common Stock, of which One Thousand (1,000) Shares are issued and outstanding as of closing. There are no preemptive rights, options, warrants, contracts or other rights to subscribe for or purchase, or contracts or other obligations to issue or grant any rights to acquire, any of AIR 88's authorized and unissued Common Stock other than rights that have been waived. There are no outstanding contracts of Sellers or AIR 88 to repurchase, redeem or otherwise acquire any of the Shares. All of the shares are duly authorized, validly issued and outstanding and are fully paid and nonassessable and were issued in conformity with applicable laws. The Shares have the rights, preferences and privileges described in the charter documents of AIR 88, true, correct and complete copies of which have been delivered to Purchaser. Any Shares of Common Stock of AIR 88 which were issued and reacquired by AIR 88 were so reacquired (and, if reissued, so reissued) in compliance with all applicable laws, and AIR 88 does not have any outstanding obligation or liability with respect thereto.

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(d) Financial Statements; Changes; Contingencies; Accounts Payable.

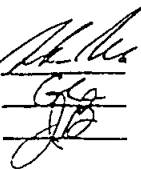
i) Financial Statements. Sellers have delivered to Purchaser balance sheets for AIR 88, INC. for the calendar years ending December 31, 1991, December 31, 1992, and December 31, 1993, and for the one month period ending January 31, 1994, and the related statements of operations, changes in Shareholder equity, and changes in financial position for the periods then ended. All such financial statements have been accurately prepared and have been certified by the Chief Financial Officer or Treasurer of AIR 88. Such statements of operations and cash flow present fairly the results of operations and cash flows of AIR 88 for the respective periods covered, and the balance sheets present fairly the financial condition of AIR 88 as of their respective dates, except for such liabilities and contingencies as are set forth in "Exhibit E" hereto. All interim financial statements reflect all adjustments (which consist only of normal recurring adjustments not material in amount and include but are not limited to estimated provisions for year-end adjustments) necessary for a fair presentation. At the dates of such balance sheets, AIR 88 did not have any material liability (actual, contingent or accrued) that should have been shown or reflected therein but were not, except for such liabilities and contingencies as are set forth in "Exhibit E" hereto. Since January 31, 1991, there has been no change in any of the significant accounting policies, practices or procedures of AIR 88.

ii) No Material Adverse Changes. Since January 31, 1994, whether or not in the ordinary course of business, there has not been, occurred or arisen, a) any change in or event affecting AIR 88, the business or the Shares that has had or may reasonably be expected to have a material adverse effect on AIR 88, the business or the Shares, or, b) any casualty, loss, damage or destruction (whether or not covered by insurance) of any material property of AIR 88 that has involved or may involve a loss to AIR 88 of more than \$5,000.00.

iii) No Other Liabilities or Contingencies: AIR 88 does not have any liabilities of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, probable of assertion or not, except liabilities that are reflected or disclosed in the most recent of the financial statements dated January 31, 1994.

iv) Accounts Payable. AIR 88 does not have any accounts payable, except for those accounts payable set forth in "Exhibit F" hereto and accounts payable that are normal and customary but due to cut-offs are not included.

Initials



(e) Tax and Other Returns and Reports. AIR 88 has timely filed or will file all required tax returns and has paid all taxes due for all periods ending on or before the date hereof, except for any tax credits and liabilities set forth in "Exhibit P" hereto. Unless otherwise noted in "Exhibit A", adequate provision has been made in the books and records of AIR 88 and to the extent required by GAAP in the financial statements referred to in Section (d)-i above delivered to Purchaser, for all taxes whether or not due and payable and whether or not disputed. Neither the IRS nor any other governmental entity has examined or is in the process of examining the United States federal income tax returns and any other tax returns of AIR 88. All required tax returns, including amendments to date, have been prepared in good faith without negligence or willful misrepresentation and are complete and accurate in all material respects. No governmental entity has proposed (tentatively or definitively), asserted or assessed or, to the best knowledge of Sellers, threatened to propose or assert, any deficiency, assessment or claim for taxes and there would be no basis for any such delinquency assessment or claim.

(f) Material Contracts. True, correct and complete copies of all material contracts, including all amendments and supplements thereto, are included as "Exhibit G" to the Agreement. Each material contract is valid and subsisting; AIR 88 has duly performed all its obligations thereunder to the extent that such obligations to perform have accrued; and no breach or default, alleged breach or default, or event which would (with the passage of time, notice or both) constitute a breach or default thereunder by AIR 88 or, to the best knowledge of Sellers, any other party or obligor with respect thereto, has occurred or as a result of performance of this Agreement will occur. Consummation of the transactions contemplated by this Agreement will not (and will not give any person a right to) terminate or modify any rights of, or accelerate augment any obligation of, AIR 88. To Sellers' knowledge, no employee of AIR 88 is or will be in violation of any term of any employment contract, patent disclosure agreement or any other contract or agreement relating to the relationship of such employee with AIR 88 or any other person because of the nature of the business conducted or to be conducted by AIR 88.

(g) Real and Personal Property; Title to Property; Leases. AIR 88 has good and marketable title to or other right to use all items of real property, including fees, leaseholds and all other interests in real property, including but not limited to AIR 88's leasehold estates in San Diego, California, and such other assets and properties that are material to the business, including but not limited to all of the assets listed on "Exhibit H" hereto and any and all other assets that it purports to own or have the right

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to use, free and clear of any encumbrance, other than, i) the lien of current taxes not yet due and payable, and, ii) possible minor liens and encumbrances which do not in any case materially detract from the value of the property subject thereto or materially impair the business of AIR 88, and which have not arisen otherwise than in the ordinary course of business. All material tangible properties of AIR 88 are in a good state of maintenance and repair (except for ordinary wear and tear) and are adequate for the business. All material leasehold properties held by AIR 88 as lessee are held under valid, binding and enforceable leases, subject only to such exceptions as are not, individually or in the aggregate, material to the business, and AIR 88 is in compliance with such leases in all material respects. There is no pending or threatened action that would materially interfere with the quiet enjoyment of any such leasehold by AIR 88. Purchaser shall have the right, to directly assume the airport lease for AIR 88's San Diego, California, operation with the City of San Diego which are in effect on the date of this Agreement and/or on the closing date. Sellers will make application for any necessary approval from the City of San Diego to ensure the continuation of the lease after the transfer of the AIR 88 Shares to Purchaser subject only to the approval of the City.

(h) No Conflict. The execution, delivery and performance of this Agreement and the fulfillment of or compliance with the terms and provisions hereof are not in contravention of or in conflict with the Charter Documents of AIR 88, or any applicable laws binding upon Sellers or AIR 88 or any contract to which AIR 88 is a party or by which Sellers or AIR 88 or any of their respective property may be bound or affected, which contravention or conflict, if any, would have a material adverse effect upon the business.

(i) Consents and Approvals. Other than consents which have been obtained or will be obtained prior to closing, no permit, authorization, filing, registration or other action, with, or by the FAA, any other governmental entity or any other person (including shareholders and creditors) is required in connection with Sellers' execution, delivery and performance of this Agreement, except for appropriate filings with the State of California, and, compliance as may be required with 14-CFR145.

(j) Legal Proceedings and Claims. There is no order or action pending, or, to the best knowledge of Sellers, threatened, against or affecting AIR 88 or any of its properties or assets that individually or when aggregated with one or more other orders or actions has or might reasonably be expected to have a material adverse effect on the business, on Sellers' ability to perform this Agreement, or on any aspect of the transactions contemplated by this Agreement. There is no matter as to which AIR 88 has

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received any notice, claim or assertion, or, to the best knowledge of Sellers, which otherwise has been threatened or is reasonably expected to be threatened or initiated, against or affecting AIR 88 or any director, officer, employee, agent or representative of AIR 88 or any other person, nor to the best knowledge of Sellers is there any reasonable basis therefor. The foregoing includes, without limitation, actions pending or threatened (or any basis therefor known to AIR 88) involving the prior employment of any of AIR 88's employees or former employees, their use in connection with AIR 88's business of any information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers. AIR 88 is not a party or subject to the provisions of any order, writ, injunction, judgment, or decree of any court or governmental agency or instrumentality. There is no action, suit, proceeding, or investigation by AIR 88 currently pending or that AIR 88 intends to initiate.

(k) Minute Books, Stock Record Books and Charter Documents. True, correct and complete copies of the minute books of AIR 88, the stock record books of AIR 88 and the charter documents of AIR 88, including all amendments and supplements thereto, are included as "Exhibit D" to this Agreement. Such minute books accurately reflect all actions and proceedings taken to date by the respective shareholders, boards of directors and committees of AIR 88, and such stock record books of AIR 88 accurately reflect all transactions in the capital stock of AIR 88.

(l) Accounting Records. AIR 88 has records, which have been made available for inspection by Purchaser, that accurately and validly reflect their respective transactions, and accounting controls sufficient to insure that such transactions are, i) executed in accordance with management's general or specific authorization and, ii) recorded in conformity with GAAP so as to maintain accountability for assets.

(m) Insurance. AIR 88 has in full force and effect such insurance which it believes in good faith is adequate for its business as currently conducted. All such insurance policies are in good standing and in effect on the date hereof. True, correct and complete copies of all such insurance policies are attached as "Exhibit I" hereto.

(n) Permits. AIR 88 holds all permits that are required by the FAA and any other governmental entity to permit it to conduct its business as now conducted, including but not limited to its certified FAA Repair Station, and all such permits ("Exhibit J") are valid and in full force and effect and will remain so upon consummation of the transactions contemplated by the this Agreement. No suspension, cancellation or termination of any of such permits is threatened or imminent.

Initials

(o) Compliance with Laws. AIR 88 is organized and has conducted its business in accordance with applicable laws, and the forms, procedures and practices of AIR 88 are in compliance with all applicable laws, in all material respects.

(p) Dividends and Other Distributions. There has been no dividend or other distribution of assets or securities whether consisting of money, property or any other thing of value, declared, issued or paid to or for the benefit of Sellers subsequent to the date of the most recent financial statements described in "Exhibit E" by AIR 88.

(q) Employee Benefits.

i) Employee Benefit Plans, Collective Bargaining and Employee Agreements, and Similar Arrangements. There are no collective bargaining, employment or severance agreements or other similar arrangements to which AIR 88 is or ever has been a party or by which AIR 88 is or ever has been bound, legally or otherwise, including, without limitation, a) profit-sharing, deferred compensation, bonus, stock option, stock purchase, pension, retainer, consulting, retirement, severance, welfare or incentive plans, agreements or arrangements, b) plans, agreements or arrangements providing for "fringe benefits" or perquisites to employees, officers, directors or agents, including but not limited to benefits relating to AIR 88 automobiles, clubs, vacation, child care, parenting, sabbatical, sick leave, medical, dental, hospitalization, life insurance and other types of insurance, c) employment agreements, or, d) other "employee benefit plans" (within the meaning of the Employee Retirement Income Security Act of 1974, as amended), except for such agreements, plans or arrangements as are set forth and described in "Exhibit M".

ii) Qualified Plans. AIR 88 has a profit sharing plan within the meaning of Section 401(a) of the Internal Revenue Code and is set forth and described in "Exhibit M".

iii) Health Plans. AIR 88 has not operated nor currently operates any group health plan, except for the health plan set forth and described in "Exhibit M".

(r) Certain Interests. No affiliate of Sellers, AIR 88, INC., nor any employee, officer or director of AIR 88, INC., has any material interest in any property used in or pertaining to the business.

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(s) Bank Accounts, Powers, etc. "Exhibit K" lists each bank, trust company, savings institution, brokerage firm, mutual fund or other financial institution with which AIR 88 has an account or safe deposit box and the names and identification of all persons authorized to draw thereon or to have access thereto, and lists the names of each person holding powers of attorney or agency authority from AIR 88 and a summary of the terms thereof.

(t) Brokerage or Finder's Fees. Neither the Sellers nor the Purchaser have used the services of any brokerage firm, or are obligated to pay any finder's fees, relating to this transaction.

(u) Customers and Suppliers. "Exhibit L" lists the names of and describes all contracts with any customers of and the most significant suppliers of the business at the date of this Agreement, and any sole-source suppliers of significant goods or services (other than electricity, gas, telephone water) to AIR 88 with respect to which alternative sources of supply are not readily available on comparable terms and conditions.

(v) Environmental Compliance. AIR 88, INC., to Sellers' knowledge, has not generated, used, transported, treated, stored, released or disposed of, or has suffered or permitted anyone else to generate, use, transport, treat, store, release or dispose of any hazardous substance in violation of any applicable laws. To Sellers' knowledge there has not been any generation, use, transportation, treatment, storage, release or disposal of any hazardous substance in connection with the conduct of the business of AIR 88 or the use of any property or facility of AIR 88 or, to the knowledge of Sellers, any nearby or adjacent properties or facilities, which has created or might reasonably be expected to create any liability under any applicable laws or which would require reporting to or notification of any governmental entity. Sellers agree that prior to closing Purchaser may conduct an EPA certified inspection of AIR 88's leased premises in San Diego, California. The cost of any corrective work required to bring AIR 88 or its property or facilities into compliance with EPA regulations must be agreed to by Sellers and Purchaser. If an agreement as to who should bear the cost cannot be reached Purchaser may cancel this stock purchase Agreement and receive a full refund of his escrow deposit.

(w) Non-Competition. In connection with the sale by Sellers to Purchaser of all of the outstanding shares of Common Stock of AIR 88, and in recognition of the significant value of the goodwill of the business, Sellers agree that neither they, nor any of their affiliates, shall, either directly or indirectly, carry on or engage in, either as an owner, part-owner, manager, operator, employee, salesman, agent, associate or consultant of any person,

Initials

partnership or corporation, or as a stockholder, officer or director of a corporation, any business that is competitive or adverse to that of AIR 88, as conducted by AIR 88 now or at any time during Sellers' tenure with AIR 88 as a consultant pursuant to the Consulting Agreement, anywhere in the United States or Mexico for a period of three (3) years from the date of closing.

(x) Accuracy of Information. None of the information supplied or to be supplied by or on behalf of Sellers or AIR 88, INC., i) to any person for inclusion in any document or application filed with any governmental entity having jurisdiction over or in connection with the transactions contemplated by this Agreement or, ii) to Purchaser, his agents or representatives in connection with these transactions, this Agreement or the negotiations leading up to this Agreement did contain, or at the respective times such information is or was delivered, will contain any untrue statement of a material fact, or omitted or will omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. If any of such information at any time subsequent to delivery and prior to closing becomes untrue or misleading, in any material respect, Sellers will promptly notify Purchaser in writing of such fact and the reason for such change.

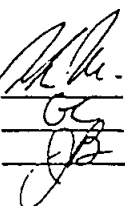
5. Representations, Warranties and Covenants of Purchaser.

The Purchaser represents, warrants and covenants to Sellers as of the date hereof and as of the closing date as follows:

(a) Enforceability. Assuming due execution and delivery of this Agreement by Sellers, this Agreement is a legal, valid and binding obligation of Purchaser enforceable in accordance with its terms except, i) as Purchaser's obligations may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws, or by equitable principles relating to or limiting creditors' rights generally and, ii) that the remedies of specific performance, injunction and other forms of equitable relief are subject to certain tests of equity jurisdiction, equitable defenses and the discretion of the court before which any proceeding therefor may be brought.

(b) No Conflict. The execution, delivery and performance of this Agreement and the fulfillment of or compliance with the terms and provisions hereof are not in contravention of or in conflict with any applicable laws or any contract to which Purchaser is a party or by which Purchaser or any of his property may be bound or affected, which contravention or conflict,

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The block contains handwritten initials and signatures. At the top, there are initials that appear to be 'M.H.' followed by a horizontal line. Below this, there are two more horizontal lines, each with a signature or set of initials written over them. The signatures are cursive and stylized.

if any, would have a material adverse effect upon the properties or financial (or other) condition of Purchaser.

(c) Consents and Approvals. Other than consents which have been obtained or will be obtained prior to closing, no permit, authorization, filing, registration or other action, with, or by any governmental entity or any other person (including shareholders and creditors) is required in connection with Purchaser's execution, delivery and performance of this Agreement, except for appropriate filings with the State of California.

(d) Investor Knowledge. By reason of Purchaser's business and financial experience, it has such knowledge, sophistication and experience in business and financial matters as to be capable of evaluating the merits and risk of the investment contemplated by this Agreement.

(e) Acquisition for Investment. Purchaser represents, and in connection with this sale to Purchaser it is specifically understood and agreed, that Purchaser is acquiring the Shares solely for its account and not with a view to or for sale in connection with any distribution thereof, and that Purchaser has no present intention or plan to effect any distribution of the Shares.

(f) Access to Information. Purchaser has been given adequate opportunities to obtain any additional information and documents relating to the acquisition of the Shares.

(g) Confidential Information. Purchaser agrees that, in the event that Purchaser is not able to complete its contractual obligations undertaken pursuant to this Agreement and consummate the closing, Purchaser shall not disclose or use any confidential information it has obtained from Sellers or AIR 88, INC. concerning the business or the subject matter of this Agreement without the prior written consent of Sellers and AIR 88, INC..

(h) Maintenance of Records. Purchaser shall use his best efforts to cause AIR 88, INC. to maintain and preserve all of its records for a period of five years after the closing,, and to permit inspections thereof by Sellers during such time period, upon reasonable notice and during normal business hours, for purposes of defending again tax audits and/or indemnity claims.

(i) Loans from Shareholders. Purchaser will cause AIR 88, INC. to pay within sixty (60) days of the closing date of this contract a loan

from Shareholder Jo Ann Blanton that has an approximate balance of Thirty Thousand Dollars (\$30,000.00).

6. Conditions to Obligations.

(a) Conditions to Obligations of Purchaser. The obligations of Purchaser to effect the closing shall be subject to the following conditions except to the extent waived in writing by Purchaser:

i) Representations, Warranties and Covenants of Sellers. The representations and warranties of Sellers herein contained shall be true at the date of closing with the same effect as though made at such time. Sellers shall have performed all obligations and complied with all covenants and conditions required by this Agreement to be performed or complied with by them at or prior to the closing date, and Sellers shall have delivered to Purchaser certificates of Sellers in form and substance satisfactory to Purchaser, dated the closing date, and signed by Sellers to such effect.

ii) No Material Adverse Change. There shall not have been any material adverse change in or affecting the business subsequent to January 31, 1994, except net change in liabilities of AIR 88, INC. as reflected on "Exhibit A", and, the February 28, 1994, balance sheet and operating statement as reflected on "Exhibit N".

iii) Execution and Delivery of Certain Agreements. Sellers shall have executed and delivered to Purchaser and AIR 88, INC. the consulting agreement, substantially in the form and substance attached as "Exhibit O" to this Agreement, on or prior to the closing date. Sellers will deliver to Purchaser an acknowledgment from the City of San Diego that the lease between AIR 88, INC. and the City of San Diego will not be effected by the transfer of the AIR 88, INC. Shares to Purchaser, and will remain in full force and effect.

iv) Resignation of Directors and Officers. At or prior to the closing, the current directors and officers of AIR 88, INC. (as set forth on "Exhibit D" hereto) shall resign their positions with AIR 88, INC. in favor of the nominees of Purchaser, and such nominees of Purchaser shall be elected to such offices of AIR 88, INC. in accordance with the terms of AIR 88, INC.'s charter documents.

7. Indemnification.

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(a) Sellers' Indemnity Certain Tax Matters. Seller agrees to indemnify, defend and hold harmless Purchaser and AIR 88, INC. against, i) any tax payable by or on behalf of Sellers or AIR 88, INC. for any taxable period ending on or prior to the closing date, ii) any deficiencies in any tax payable by or on behalf of Sellers or AIR 88, INC. arising from any audit by any taxing agency or authority with respect to any period ending on or prior to closing date, iii) any claim or demand for reimbursement or indemnification resulting from any transfer by Sellers prior to the closing of any tax benefits or credits to any other person, and, iv) any tax liabilities arising out of the transfer of the Shares, v) Sellers shall have the responsibility for, and the right to control, at Sellers' expense, the audit (and disposition thereof) of any tax return relating to periods ending on or prior to the closing date, and the right to participate in and approve the disposition of the audit of any tax return relating to the periods ending after the closing date if such audit or disposition thereof could give rise to a claim for indemnification hereunder. Purchaser shall have the right directly or through his designated representatives, to review in advance and comment upon all submissions made in the course of audits or appeals thereof to any governmental entity relating to periods ending on or prior to the closing date, and to approve the disposition of any audit adjustment with respect to such periods if such disposition will or might reasonably be expected to result in an increase in taxes of Purchaser or AIR 88, INC. for any period beginning at or after the closing date.

(b) Purchasers' Indemnity. Purchaser agrees to indemnify, defend and hold Sellers harmless against claims for payment of monies owed by AIR 88, INC. on which obligations Sellers have guaranteed payment.

(c) Procedure.

i) Notice. Any party seeking indemnification with respect to any loss shall give written notice to the party required to provide indemnity hereunder (the "Indemnifying Party") within 10 days of receipt of any notice or facts giving rise to such indemnity.

ii) Survival. This Section 7 shall survive any termination of this Agreement. This indemnification further shall survive the closing and shall remain in effect for a period of five (5) years after the closing date, with respect to indemnification for tax liabilities, and for a period of four (4) years after the closing date, with respect to indemnification for all other liabilities (as applicable, the "Indemnification Period"). Any matter as to which a claim has been asserted by notice to the other party that is pending or unresolved at the end of any applicable limitation period shall continue to be covered by this Section 7 notwithstanding any applicable

statute of limitations (which the parties hereby waive) until such matter is finally terminated or otherwise resolved by the parties under this Agreement or by a court of competent jurisdiction and any amounts payable hereunder are finally determined and paid.

iii) Notice by Sellers. Sellers agree to notify Purchaser of any liabilities, claims or misrepresentations, breaches or other matters covered by this Section 7 upon discovery or receipt of notice thereof (other than from Purchaser), whether before or after the closing.

iv) Not Exclusive Remedy. This Section 7 shall not be deemed to preclude or otherwise limit in any way the exercise of any other rights or the pursuit of other remedies for the breach of this Agreement or with respect to any misrepresentation.

8. Miscellaneous.

(a) Entire Agreement; Amendments; Waivers. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties. No course of dealing between Sellers and Purchaser nor any delay in exercising any rights hereunder shall operate as a waiver of any rights of Sellers or Purchaser. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(b) Expenses. Purchaser shall pay all expenses incurred by Purchaser incident to the negotiation, preparation, and execution of this Agreement and the transactions contemplated hereby, including but not limited to the fees, expenses and disbursements of Purchaser's counsel. Sellers shall pay all expenses incurred by Sellers incident to the negotiation, preparation and execution of this Agreement and the transactions contemplated.

(c) Survival of Representations and Warranties. All representations and warranties contained herein or made in writing by Sellers or Purchaser in connection herewith shall survive the execution and delivery of this Agreement, the sale and purchase of the Shares and any disposition thereof for the duration of the Indemnification Period.

Initials

(d) Specific Performance. Sellers acknowledge and agree that irreparable damage would occur to Purchaser in the event that any of the provisions of this Agreement were not performed by Sellers in accordance with their specific terms or were otherwise breached, and that such damage to Purchaser would not be compensable in money damages and that it would be extremely difficult or impracticable to measure the resultant damages to Purchaser. It is accordingly agreed by the parties hereto that Purchaser shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement by Sellers and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which Purchaser may be entitled at law or in equity, and Sellers expressly waive, in a suit for breach of this Agreement, any defense that a remedy in damages would be adequate, and expressly waives any requirement in an action for specific performance for the posting of a bond by Purchaser.

(e) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court or competent jurisdiction or other authority to be invalid, void or unenforceable, i) the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated and, ii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any Paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

(f) Further Assurances. The parties hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments or documents as any other party may reasonably request from time to time in order to carry out the intent and purposes of this Agreement and the consummation of the transactions contemplated hereby. Neither Sellers nor Purchaser shall voluntarily undertake any course of action inconsistent with satisfaction of the requirements applicable to it set forth in this Agreement and each shall promptly do all such acts and take all such measures as may be appropriate to enable them to perform as early as practicable the obligations herein required to be performed by it.

(g) Due Diligence. Sellers will allow Purchaser, or his agents and representatives, to perform such due diligence Purchaser deems necessary. Sellers recognize that time is of the essence for the completion of the due diligence review to allow for the closing of this transaction no later than March 31, 1994. As part of the due diligence an environmental audit of

the leased premises will be ordered by Purchaser's attorney, however, if toxic liabilities are discovered Sellers will be immediately notified to determine if a final report with respect to the environmental audit will be prepared. If the Sellers and Purchaser cannot come to agreement as to payment of the cost of any necessary remediation then Sellers shall immediately notify Purchaser and the escrow agent that this contract is canceled. Purchaser's attorney will then notify the party conducting the environmental audit to close their file without preparation of a written report. Purchaser will pay the cost of the due diligence review and the environmental audit and agrees not to disclose any environmental information to any party without Sellers' consent.

(h) Notices. All communications provided for hereunder shall be sent by first class mail, courier service or telecopy and, i) if to Purchaser, addressed to Purchaser as follows: Mr. Giorgio Cagliero, 4353 Citrus Dr., Fallbrook, California, 92028, telecopy number (619) 728-2206, or to such other address or addresses as Purchaser may have designated to Seller in writing, and, ii) if to Sellers, addressed to Sellers as follows: Ms. Jo Ann Blanton, 17762 Villamoura Drive, Poway, California, 92064, and, Mr. Niels K. Mikkelsen, 720 Alamo Lane, Escondido, California, 92025, or to such other address or addresses as Sellers may have designated to Purchaser in writing. Notice shall be effective upon receipt.

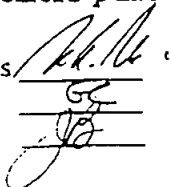
(h) Descriptive Headings; Construction. The descriptive headings of the several Sections and subsections of this Agreement are inserted for convenience only and do not constitute a party of this Agreement. In this Agreement, whenever the context so requires, the masculine gender herein includes the feminine or neuter, and the singular number includes the plural.

(i) Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

(j) Counterparts. This Agreement shall be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement, to produce or account for more than one such counterpart.

(k) Termination. This Agreement shall terminate and be of no force and effect if prior to March 5, 1994, Purchaser shall not have received from Sellers, and Purchaser shall not have approved in writing the form and content of, the Exhibits to this Agreement required to be delivered by Sellers pursuant to this Agreement. In approving the form and content of

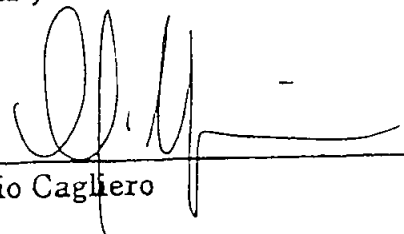
Initials



the Exhibits to this Agreement, Purchaser shall use good faith in determining whether such Exhibits reflect any material adverse effects on the business of AIR 88, INC. Upon termination in accordance with the terms of this Section 8 (k), the \$10,000.00 placed by Purchaser in escrow pursuant to Section 2 (a) of this Agreement shall be returned to Purchaser in accordance with the terms and conditions of the escrow instructions. Notwithstanding anything to the contrary contained in this Agreement, the representations, warranties and covenants of Sellers contained in Section 4 of this Agreement and the representations, warranties and covenants of Purchaser contained in Section 5 of this Agreement shall not be effective or operative until Sellers shall have delivered to Purchaser, and Purchaser shall have approved in writing the form and content of, the Exhibits to this Agreement required to be delivered by Sellers pursuant to the escrow instructions.

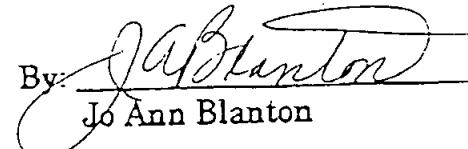
IN WITNESS WHEREOF, the parties have executed this Agreement on this 21 day of FEBRUARY, 1994.

GIORGIO CAGLIERO
("Purchaser")

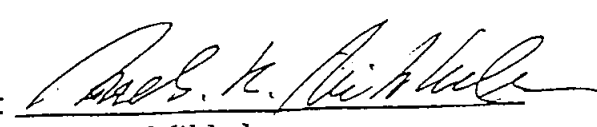
By: 

Giorgio Cagliero

JO ANN BLANTON
NIELS K. MIKKELSEN
("Sellers")

By: 

Jo Ann Blanton

By: 

Niels K. Mikkelsen