

PROPERTY DEPARTMENT

FILED MAY 29 1970

LEASE AGREEMENTOFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS LEASE AGREEMENT, executed in duplicate this 19 day of May, 19 70, by and between THE CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, and GIBBS FLYING SERVICE, INC., a California corporation, whose address is Montgomery Field, San Diego, California 92123, hereinafter called respectively the "City" and the "Lessee" without regard to number or gender.

WITNESSETH:

(A) City hereby leases to Lessee and Lessee leases from City all that certain real property together with all appurtenances thereto situated in the County of San Diego, State of California, and more particularly described as follows:

Those portions of Lots 1, 2 and 21 of Montgomery Field as shown outlined in red on City of San Diego Drawing No. 13246-2-D attached hereto marked Exhibit "A" and made a part of this agreement and consisting of approximately 970,000 square feet of vacant land area, together with the right of access to and use of designated taxi-ways and runways.

1. Said real property is leased to Lessee for the purpose of construction, operation and maintenance of a fixed base flying service, including sales and rental of aircraft, aircraft parts and accessories, aircraft engine and airframe repair, flight instruction, renting aircraft storage and tiedown space, operating an aircraft charter, air taxi and flight service, sale of aeronautical supplies, car rental, sale of aviation petroleum products to the general public and such other incidental uses as are approved in writing by the City Manager of City, and for no other purpose.

2. The failure, in the opinion of the City Manager of City, of Lessee to use the premises for which they are leased, a fixed base flying service, shall be grounds for the immediate termination of this lease by City. Lessee covenants to City that it will diligently conduct the business to produce a reasonable and substantial income. In the event that one or some of the purposes described in Section (A) 1 included within the primary purpose of a fixed base flying service prove to be economically infeasible or result in a loss Lessee shall not be required to use the leased premise for such purpose or purposes so long as Lessee continues to use the premises for the primary purpose of this lease.

(B) The term of this lease shall be twenty (20) years commencing on ~~May~~ ^{JUNE} 1, 1970, provided, however, that if this lease has not been previously terminated and the Lessee is not then in default, the term of this lease may be extended for three additional periods of five (5) years each upon the terms and conditions herein set forth or as subsequently amended at the option of the Lessee. The option shall be exercised by serving a written notice of such extension upon City not more than one year nor less than six months prior to the end of the original term and any extension thereof.

(C) The rent is payable monthly on or before the last day of each month, except as otherwise provided herein, following the close of the calendar month, in which the

income was earned at the Office of the City Treasurer, City Administration Building, Community Concourse, San Diego, California 92101.

Lessee shall pay City a sum of money based on a percentage of Gross Income as listed in sub-paragraphs 1 through 7 below or a minimum annual rental set forth in sub-paragraph 8 below, whichever of the two amounts is the greater.

1. ONE-HALF PERCENT ($\frac{1}{2}\%$) of the Gross Income derived from the sale of new or used aircraft.
2. ONE-HALF PERCENT ($\frac{1}{2}\%$) of the Gross Income derived from the sale of aircraft, aircraft parts and accessories, radios and services sold to dealers for resale.
3. SEVEN PERCENT (7%) of the Gross Income derived from the rental of aircraft tiedown facilities.
4. FIVE PERCENT (5%) of the Gross Income derived from the rental of aircraft storage hangars.
5. FOUR PERCENT (4%) of the Gross Income derived from the sale of aviation fuel to the general public.
6. TWO PERCENT (2%) of the Gross Income derived from the sale of aviation oil to the general public.
7. TWO AND ONE-HALF PERCENT ($2\frac{1}{2}\%$) of Gross Income from all other sources of income from the leased premises not hereinabove defined.
8. The minimum annual rental shall be computed at the rate of TWO AND ONE-HALF CENTS (\$.025) per square foot per year for each square foot of land leased hereunder. Lessee shall pay said minimum rent, if applicable, annually within thirty (30) days following each anniversary of the commencement date of this lease.

The minimum annual rent may be adjusted, at City's option at the expiration of each five year period to SIXTY SIX AND TWO-THIRDS PERCENT ($66\frac{2}{3}\%$) of the annual average of actual rents paid including any rents computed to have been payable during the preceding five year period. In no event shall the minimum annual rent to be paid City during any five year period be less than the minimum annual rent required for the preceding five year period.

In the event Lessee fails to pay such rent on or before the last day of the month in which said rent was due, then Lessee shall pay City, in addition to the delinquent rent, a sum of money equal to FIVE PERCENT (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent, then Lessee shall pay City, instead of said FIVE PERCENT (5%), a sum of money equal to TEN PERCENT (10%) of said delinquent rent. It is the intent of this provision that City shall be compensated by such additional sums for loss resulting from rental delinquency including costs to City of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of Lessee prior to the delinquent period.

(D) It is further mutually agreed by the parties as follows; that:

1. ^{Re Sec} RECORDS. Gross Income as used in this lease shall include all income resulting from occupancy of the demised premises from whatever source derived whether received or to become due, as outlined hereinabove (except such income as shall be specifically excluded as elsewhere in this agreement provided) including the amount of any manufacturer's or importer's excise tax included in the prices of property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross Income, however, shall not include federal, state or municipal taxes collected from the consumer as such taxes (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by Lessee to a governmental agency accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

Whenever the rent hereunder is dependent on percentage calculations of gross income accruing to Lessee, the Lessee shall keep, or cause to be kept, true, accurate and complete records and double entry books from which the City can at all times determine the nature and amounts of income subject to rental percentage from the operation of the leased premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and tickets issued. Allowances made by Lessee for "traded-in" merchandise shall be excluded from computation of gross income provided Lessee keeps adequate records, in the opinion of the City, from which City can determine what allowances were made. Said books of account and records shall be kept or made available at one location within the limits of the City of San Diego. Not later than the TWENTIETH of each month, Lessee shall render to City a detailed statement as to the source of the receipts showing all money accrued and sales made during the preceding month together with the amount payable to City as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due City. City shall through its duly authorized agents or representatives have the right to at any and all reasonable times examine and audit said records for the purpose of determining the accuracy thereof, and of the monthly statements of moneys accrued and sales made on said premises or quantities of material removed from said premises.

2. **QUIET POSSESSION.** Lessee, paying the said rent and performing the covenants and agreements aforesaid, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term aforesaid. If City for any reason whatsoever cannot deliver possession of the said premises to Lessee at commencement of said term as hereinbefore specified or, if Lessee is dispossessed through action of a title superior to City's, then and in either of such events this lease shall not be void or 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 deduction of the rent covering the period or periods during which Lessee is prevented from having the quiet possession of the demised premises.

3. **INSURANCE RISKS.** The Lessee shall not use, or permit said premises, or any part thereof, to be used, for any purpose or purposes other than the purpose or purposes for which the said premises are hereby leased. Unless included within the said purposes or necessarily incident thereof, no use shall be made or permitted to be made of the said premises, nor acts done, which will increase the existing rate of insurance upon the building or buildings, if any, belonging to City which may be located on the leased premises or in which said premises may be located, or cause a cancellation of any insurance policy covering said building or buildings or any part thereof, nor shall any article which may be prohibited by the standard form of fire insurance policy be or be permitted to be kept, used, or sold in or about said premises. The lessee shall, at his sole cost and expense, comply with any and all requirements, pertaining to said premises of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said buildings and appurtenances.

4. **IMPROVEMENTS, REPAIRS, ALTERATIONS.** Lessee shall not make any alterations or changes in the leased premises or cause to be made, built or installed thereupon, any improvements and shall not alter or repair any existing improvements; except in accordance with plans and specifications previously submitted to the City Manager of said City and approved, in writing, by him. Lessee agrees to take good care of the leased premises fixtures and appurtenances, and of all alterations, additions and improvements to any of them and make all repairs in and about the same that may be necessary to preserve them in good order and conditions (which repairs shall be equal to the original work in respect to quality), and promptly pay the expense of such repairs. City shall not be required to make any improvements, repairs or alterations not herein specifically required. Lessee hereby waives all right to make repairs at the expense of City as provided in Section 1942 of the Civil Code of the State of California and all rights provided for by Section 1941 of said Civil Code. By entry hereunder, Lessee accepts the premises as being in good and sanitary order, condition and repair, and agrees on the last day of the term or sooner

termination of this lease to surrender to City the premises with improvements in the same condition as when received or as they may have been put into subject, however, to Section 5, hereinafter.

5. OWNERSHIP OF IMPROVEMENTS. All improvements except trade fixtures installed by Lessee in accordance with the provisions of this lease shall become the property of City at City's option upon expiration or sooner termination of this lease agreement. Trade fixtures installed by Lessee shall be and remain the property of Lessee. Lessee shall have the right to remove said trade fixtures prior to the termination of this agreement at Lessee's own expense, provided that any damage to the remaining improvements shall be repaired and the premises left in good order and condition, in the opinion of the City Manager of City. In the event Lessee does not so remove said trade fixtures or real property not reverting to City prior to the expiration of this Lease, City may remove, or sell, or destroy the same at the expense of Lessee, and Lessee shall pay to City the entire cost of any such removal, sale or destruction together with the entire cost of repair or damages to City's property resulting from such removal, sale or destruction. At the option of City, any property, real or personal, not so removed by Lessee may be deemed abandoned, and shall become the sole and exclusive property of City.

6. MECHANIC'S LIEN BOND. Lessee will save City free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repair or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees.

In the event that improvements, repairs, or alterations are constructed on the leased premises by other than the City, the Lessee shall file with the City a bond, conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used, in the amount of the estimated cost of the improvement, alteration, or repair as determined by the City Manager. The bond shall be acknowledged by the Lessee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

In the event that a lien is recorded under Chapter II of Title 4 of Part 3 of the California Code of Civil Procedure against the leased premises and the lien-holder attempts to perfect such lien by a lawsuit and the Lessee has failed to comply with the requirements of this paragraph, this lease shall automatically terminate five (5) days after service of summons in such lawsuit upon the City; provided, however, that the City Manager shall have the right to continue this lease in full force and effect by notifying the Lessee in writing of his election to do so.

7. ENTRY AND INSPECTION. City reserves, and shall always have the right 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 on said premises. In the event that such entry or inspection by City discloses that said premises are not in a safe, healthy and satisfactory condition, City shall have the right, after ten (10) days written notice to Lessee, to have any necessary maintenance work done for and 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 safe, healthy and satisfactory condition. The rights reserved in this and the following section shall not create any obligations on City or increase obligations elsewhere in this lease imposed on City.

8. RESERVATION FOR CITY USE. City hereby reserves all rights, title and interest in any and all gas, oil, minerals and water, upon or beneath the said leased premises. City shall have the right to enter said leased premises for the purpose of drilling, operating and maintaining such installations as are necessary or desirable for the development of said gas, oil, mineral and water rights or for

making repairs to or developing the municipal services of the City. City hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good.

9. ASSIGNMENT. Lessee shall not assign this Lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents, officer and employees of City excepted) to occupy or use the said premises, without the prior written consent of the City Manager of City. A consent to one 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.

10. COMPLIANCE WITH LAW. The Lessee shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, or the operations conducted thereon; and shall faithfully observe, and secure observance with, in the use of the premises, all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon the Lessee or the leased premises by reason of any buildings, structures, machines, appliances or other improvements or any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the said demised premises. The judgement of any court of competent jurisdiction, or the admission of Lessee or any sub-lessee or permittee in any action or proceeding against them or any of them, whether the City be a party thereto or not, that the Lessee, sub-lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between City and Lessee.

11. UTILITIES. Lessee shall order, obtain and pay for all utilities, and service and installation charges in connection therewith. All utilities installed by Lessee shall be installed underground.

12. REMEDIES OF CITY: In the event (a) that Lessee shall default in the performance or fulfillment of any covenant or condition herein contained on his part to be performed or fulfilled and shall fail to cure such default within thirty (30) days following the service on him of a written notice from the City specifying the default or defaults complained of and the date on which his rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured; or (b) that Lessee shall file a voluntary petition in bankruptcy; or (c) that Lessee shall be adjudicated a bankrupt; or (d) that Lessee shall make a general assignment for the benefit of creditors then and in either or any of said events, City may at its option, without further notice or demand upon Lessee or upon any person or persons claiming by, through or under Lessee except the performance and fulfillment by the City of the condition precedent to termination of this Lease as set forth below, immediately cancel and terminate this Lease and terminate each, every, and all of the rights of Lessee and of any and all persons claiming by, through, or under Lessee in or to the Leased Premises and in or to the further possession thereof and may thereupon enter into and upon the Leased Premises and repossess the same and expel Lessee and all persons claiming by, through, or under Lessee. The rights and remedies of City as hereinabove set forth, are cumulative only and shall in no wise be deemed to limit any of the other provisions of this Lease or otherwise to deny to City any right or remedy at law or in equity which City may have or assert against Lessee under any law in effect at the date hereof or which may hereafter be enacted or become effective,

it being the intent hereof that the rights and remedies of City, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this Lease and of any right or remedy at law or in equity which City may have against said Lessee. Provided, however, that in the event that there is a deed of trust or mortgage on the leasehold given by Lessee with the consent of the City to secure a construction or other loan provided for herein the City shall not terminate this Lease until it shall have as a condition precedent served upon the mortgagee or beneficiary written notice of the default or defaults complained of and the mortgagee or beneficiary shall take the appropriate action required, if any, by Paragraph 20 -- Lease Encumbrance and this Lease shall not terminate if said mortgagee or beneficiary take the appropriate action as set out in Paragraph 20 and proceed with reasonable diligence thereafter; provided further, that if mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation, then City shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

(a) City shall first correct or cause to be corrected said default or defaults and pay the costs thereof (including costs incurred by City in enforcing this provision) from the funds of any Faithful Performance Cash Bond on deposit with City or City may call on Bonding Agent to correct said default or defaults or to pay the cost of such correction performed by or at the direction of the City.

(b) In the event that said bond is inadequate or non-existent, City shall notify beneficiary or mortgagee ten (10) days prior to exercising its right to correct or cause to be corrected said default or defaults, and charge the costs therefor (including costs incurred by City in enforcing this provision) to the account of the Lessee as rent which shall be due and payable on the date that the rent is next due after presentation by City of a statement of all or part of said costs.

(c) City may terminate this Lease with respect to the Lessee by either assuming liability or any trust deed or mortgage theretofore approved by City, or City may substitute for said terminated Lessee a new Lessee satisfactory with mortgagee or with beneficiary.

Should said default or defaults be of a non-curable type or nature, such as being impossible to, not practical to, or not feasible to cure, then the mortgagee or beneficiary shall have the absolute right to substitute itself to the estate of the Lessee hereunder and to commence performance of this Lease and this Lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within the period set out in Paragraph 20 after service upon it of said written notice of default by the City. In the event of the election by the mortgagee or beneficiary to substitute itself to Lessee's estate hereunder, the City expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this Lease with all the rights and privileges and duties of the original Lessee hereunder, subject to cure of the default or defaults by mortgagee or beneficiary as set out in Paragraph 20, and Lessee expressly assigns all its interest in and to its leasehold estate in that event.

13. ASSIGNS. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sub-Lessees of Lessee.

14. WAIVER. The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term,

covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease, other than failure of Lessee to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent, nor shall any failure on the part of City to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease be construed as in any manner changing the terms hereof or to stop City from enforcing the full provisions hereof, nor shall the terms of this lease be changed or altered in any manner whatsoever other than by written agreement of the City and Lessee.

15. MERGER. The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall at the option of City, terminate all or any existing subleases or subtenancies, or may, at the option of City, operate as an assignment to it of any or all such sub-leases or subtenancies.

16. CONTROL AND ADMINISTRATION OF LEASE; NOTICES. Control and administration of this lease is under the jurisdiction of the City Manager of City as to City's interest herein and any communication to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon City may be given or served by letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, Community Concourse, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon Lessee may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said Lessee at the address stated at the commencement hereof, or may be personally served upon said Lessee (or any one of them), or any person hereafter authorized by Lessee to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

17. WASTE, DAMAGE OR DESTRUCTION OF PREMISES. Lessee shall give prompt notice of any fire or damage that may occur from any reason whatsoever. Lessee shall not commit or suffer to be committed any waste or injury to property, or any public or private nuisance, shall keep the premises clean and clear of refuse and obstructions and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to City. All service, storage or working areas will be maintained in a neat and clean condition and will be screened from the general public's view. If the Leased Premises shall be damaged by any cause so as to render the premises untenable, unsightly or unfit for the uses or purposes for which the same are hereby let, and said damages are repairable within a reasonable time in the opinion of the City Manager, Lessee shall make or cause to be made full repairs to said damages so as to restore the premises to the condition which existed prior to said damages, or Lessee shall clear and remove from the said Leased Premises, all debris resulting from said damages, and rebuild the Premises in accordance with plans and specifications previously submitted to City Manager and approved in writing by him in order to replace the operation in kind and scope which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section (d) of Paragraph 18 hereof entitled "Insurance". Preliminary steps with a view 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.

In the event Lessee fails to commence and/or complete, with due diligence, said repairs, restoration or replacement within the time specified herein, then City shall have the option to do any of the following:

- (a) City may terminate this Agreement by the giving of notice of such termination in writing to the mortgagee or trust deed beneficiary holding the proceeds of insurance as set forth in Section (d)

of Paragraph 18 hereof entitled "Insurance", and upon receipt thereof, said mortgagee or trust deed beneficiary holding said insurance proceeds shall carry out the provisions of Part 2 of Clause (d) thereof.

(b) City may make or cause to be made said repairs, restoration or replacement of improvements, or to restore the Premises to a clean and neat condition and charge the costs therefor (including costs incurred by City in enforcing this provision) to the account of the Lessee, and Lessee authorizes City to use the insurance proceeds for said repairs, restoration or replacement of improvements, or to restore the Premises to a clean and neat condition, in accordance with Paragraph 18 hereof entitled "Insurance" and held in trust by a mortgagee or trust deed beneficiary, and Lessee hereby waives any right of said insurance proceeds.

In the event City selects said Option (b), City may have the additional options of either (i) continuing this Lease in full force and effect; or (ii) terminating this Agreement with respect to the Lessee by either assuming liability for any trust deed or mortgage theretofore approved by City, or City may substitute for said terminated Lessee a new Lessee satisfactory with mortgagee or beneficiary.

18. **INSURANCE.** Upon taking physical possession of the Leased Premises, Lessee agrees to take out and maintain public liability insurance with an insurance carrier satisfactory to City to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Lessee or any person acting for Lessee or under Lessee's control or direction and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by acts or activities of Lessee or any person acting for Lessee or under Lessee's control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Lease. Commencing with the execution of this Lease, Lessee shall maintain the minimum amount of not less than Two Hundred Thousand Dollars (\$200,000.00) for one person injured in one accident and not less than One Million Dollars (\$1,000,000.00) for more than one person injured in one accident, and in the amount of not less than Fifty Thousand Dollars (\$50,000.00) with respect to any property damage aforesaid. If the operation under this Agreement results in an increased or decreased risk in the opinion of the City Manager, than the minimum limits hereinabove designated shall be changed accordingly. If Lessee does not keep such insurance in full force and effect, City may take out the necessary insurance and pay the premium, and the repayment thereof shall be deemed to be a part of the rental and paid as such on the next day upon which rent becomes due. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

During the term of this Lease the Lessee agrees to defend in the name of and on behalf of the City all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which the City may become liable to pay as damages imposed upon City by law arising out of accidental bodily injury or death suffered or alleged to have been suffered by any person while within or upon the Premises described in this Lease, and to pay all sums which the City may become liable to pay as damages imposed upon City by law resulting from accidental injury to or destruction of property not owned, leased, occupied, or used by, or in the care, custody of, or control of the Lessee or of the City or of any employee of the Lessee or of the City subject to the following conditions:

- (a) This Agreement shall not apply to any injury or death caused by any employee of the City;
- (b) The City shall not voluntarily assume any liability or incur any expenses or settle any claim without the written consent of the Lessee;

- (c) The Lessee shall deliver to the Property Department of the City a policy of bodily injury and property damage liability insurance issued by a company licensed to transact such business in the State of California indicating that the Lessee has in that company bodily injury and property damage liability insurance as required in this Paragraph 18, and that the policy has been endorsed or does otherwise cover the contractual liability imposed by this Agreement and that the insurance company shall notify the Property Department if said policy be terminated or limited in any manner prior to the termination date specified in the policy.
- (d) Lessee also agrees upon commencement of construction on the Leased Premises, to take out and maintain during the entire remaining term of this Agreement, fire and extended coverage insurance on all property of an insurable nature belonging to Lessee located upon the Leased Premises. Said insurance shall be written by an insurance carrier satisfactory with City and in an amount sufficient to cover at least 80% of the replacement cost of said property. Lessee shall require that a policy of such insurance be filed with City and that said insurance shall not be terminated or limited in any manner prior to the termination date specified in the policy without prior written notice to City. Lessee shall pay the premium for such insurance and shall require that any such insurance proceeds resulting from a loss under said policy are payable jointly to City and Lessee in order that said proceeds will be reinvested in rebuilding or repairing the damaged property, or said proceeds may be disposed of as specified in Paragraph 17 of this Agreement, provided, however, that within the period which there is in existence a mortgage or deed of trust upon the leasehold given by Lessee with the prior consent of the City securing a construction or other loan provided for in Paragraph 20 "Lease Encumbrance" herein, then and for that period all policies of fire insurance shall be made payable jointly to the mortgagee or beneficiary and the named insured and surrendered to the said mortgagee or beneficiary and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes:
- (1) As a trust fund to pay for the reconstruction, repair or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust and with any excess remaining after full payment of said debt to be paid over to Lessee; or
- (2) In the event that this Lease is terminated with consent of both City and mortgagee or beneficiary in lieu of restoration of premises, and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent fully to discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereof without liability, to restore premises to a neat and clean condition and then for City and Lessee as their interest may appear. City reserves the right to increase the percentage of coverage when, in the opinion of the City, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits.

19. CONTROL BY LESSEE. The Corporation named herein as Lessee shall be and remain owned and controlled by William Gibbs, Jr. to the extent of at least 51% of the issued and unencumbered stock thereof and he shall actively administer and supervise the business operations of the leased premises. Provided, however, and notwithstanding the provisions of Section (E) 9 of this agreement, the Corporation named herein as Lessee shall have the right to substitute a new corporation as Lessee without further approval of City provided William Gibbs, Jr. retains at least 51% of the issued stock thereof. In the event that the above named individual becomes incapacitated, or demised, then the stockholders of said corporation shall select a manager reasonably acceptable to City to so administer and supervise said operations. Any sale or transfer of stock or divestment of interest in said corporation by said individual to the extent

that he would not own and control at least 51% thereof shall constitute an assignment of interest under this lease agreement and shall be treated in accordance with the provisions of Section (E) 9 hereof; provided, however, that the stock of either of the aforesaid individuals in the event of his incapacitation or demise, may be assigned to his spouse or direct lineal heirs or placed in trust for their benefit upon prior written notice thereof to City. Lessee shall provide City upon request with a list of all stockholders, voting and non-voting, and the number of shares held by each.

The corporation herein named shall be limited to the operation of the demised premises under the terms of this Agreement. Sale or transfer of stock in, or divestment of any interest in said corporation by the above named parties, shall be treated in accordance with the provisions of Subparagraph (E) (9) "Assignment".

20. LEASE ENCUMBRANCE. The City does hereby consent and agree that the Lessee may encumber this Lease, leasehold estate and the improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the Lessee in accordance with the financial plan approved in writing by City Manager upon the express condition that the net proceeds of such loan or loans received by the Lessee be devoted exclusively to the purpose of developing the Leased Premises and for the primary purpose of constructing the facilities in accordance with the said Master Plan for the Leased Premises; however, a reasonable portion of the loan proceeds may be disbursed for, or applied to payment of incidental costs of such construction, including but not limited to, any one or more or all of the following: Off-site improvements for service of the Leased Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by City; title insurance premiums and reasonable loan costs, such as discounts, interest and commissions; also architectural, engineering, and attorney's fees or such other normal expenses. Any subsequent encumbrances on the real property must be first approved in writing by City Manager.

In the event it is desired to assign the beneficial interest of any deed of trust, mortgage or other type security instrument, such assignment must first be approved by City. Any assigns of a beneficial interest shall have the same rights under this Lease as the assignor. City agrees not to unreasonably withhold consent to assignments of the beneficial interest. The City further consents and agrees that in the event said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, the City will accept the mortgagee or beneficiary thereof previously approved by it as its new tenant under this Lease with all the rights and privileges of the original Lessee, and that in the event that said mortgagee or beneficiary desires to assign this Lease to its nominee, and said nominee is a reputable, qualified and financially responsible operator in the opinion of the City, the City hereby agrees that upon the filing of an application for the consent to such assignment, the City will give its consent thereto, and agrees not to unreasonably withhold such consent.

Anything in this Lease to the contrary notwithstanding, City shall not exercise any remedy available to it for default, hereof by Lessee, unless and until City, as a condition precedent to such exercise, shall have given notice to said beneficiary or mortgagee, by registered or certified mail, postage prepaid, addressed as said beneficiary or mortgagee shall from time to time instruct City (or, in the absence of such instruction, addressed as shown on said deed of trust or mortgage), which notice shall specify the nature and extent of said claimed default. Thereafter, said beneficiary or mortgagee shall have the right and power to cure said default in the manner hereinafter provided and thereby cause this Lease to remain in full force and effect.

- a. If said default be in the payment of rental, taxes, insurance premiums, amount claimed under mechanic's lien on the Leased Premises or any other sum of money required to be paid by Lessee, said beneficiary or mortgagee may pay the same to City or other proper payee within 60 days after the mailing aforesaid; if so paid, said default shall be cured and this Lease shall remain in full force and effect. If, after any such payment to City, Lessee pays the same to City, or in the event City waives default, City shall promptly refund said payment to said beneficiary or mortgagee.

- b. If said default be other than specified in Sub-paragraph (a) above, City shall not exercise any such remedy if:
- (1) Within 60 days after the mailing aforesaid, said beneficiary or mortgagee commences foreclosure (by judicial action or trustee's sale) of its mortgage or deed of trust; and
 - (2) Such foreclosure be prosecuted with reasonable diligence; and
 - (3) Prior thereto, said beneficiary or mortgagee shall first have obtained, in writing, the approval of City of all prospective purchasers participating at said foreclosure sale other than beneficiary or mortgagee as to their reputation, qualifications, and financial responsibility, which approval City agrees not unreasonably to withhold; and
 - (4) Within a reasonable time after foreclosure sale, the purchaser thereafter cures such default, if said default is curable from both a feasible and practical standpoint, or if said default is not curable from a feasible and practical standpoint, or if default is impossible to cure, said default shall be incontrovertibly deemed cured upon such foreclosure sale.

21. CANCELLATION. If at any time after the expiration of the first five (5) lease years during the term of this lease or any extension thereof, CITY by resolution of the City Council, determines that the purposes of this lease as provided by Section (A) hereof are (1) at that time inconsistent with public convenience and necessity, and (2) that the leased premises shall not be used for said purpose for the then remaining term of this lease, then CITY shall have the right to terminate this lease upon one (1) year's written notice to LESSEE. In the event of such cancellation by CITY, CITY shall compensate LESSEE for the improvements placed upon the leased premises by the LESSEE. The amount of compensation to be paid to LESSEE shall be only the LESSEE'S interest in the improvements constructed on the leased premises by LESSEE in accordance with the provisions of this lease, said interest to be based upon a fair market value appraisal as of the effective date of termination. Said appraisal shall be made by an independent fee appraiser chosen from CITY'S approved list of appraisers and agreed upon by both CITY and LESSEE. In the event that CITY and LESSEE cannot agree upon an appraiser, each shall select an appraiser who will select a third appraiser who is a member of M.A.I. or who is on said CITY'S approved list of appraisers, and said third appraiser shall make the appraisal which shall be final and binding on both CITY and LESSEE. CITY and LESSEE shall each pay one-half ($\frac{1}{2}$) of the cost of such appraisal. LESSEE'S interest, for purposes of this provision, shall be that portion of the fair market value of said improvements attributed only to the unexpired term of the lease. If the remaining economic life of said improvements exceeds said unexpired term, LESSEE'S interest shall be computed by said appraisal in the following manner:

The unexpired term of the lease at date of said termination shall be divided by the remaining economic life of the improvement; the quotient thereof, multiplied by the fair market value of the improvements, shall be the LESSEE'S interest in said improvement.

If the remaining economic life of said improvement does not exceed the unexpired term of the lease, LESSEE'S interest therein shall be equal to the fair market value of said improvements, all as determined by said appraisal. Provided, however, that should said cancellation occur during a period within which there is in existence a mortgage or trust deed or other security type instrument by which LESSEE has encumbered the leasehold with the consent of CITY in accordance with Section (D) 20, LEASE ENCUMBRANCE, hereof, then such compensation due from CITY shall be first paid to the financial institution, lending agency or other party who is the beneficiary under said mortgage, trust deed or other security instrument as payment toward the unpaid balance of the loan secured thereby. Any excess of said compensation due from CITY after payment by CITY to said beneficiary, shall be paid to LESSEE. CITY shall be under no obligation to discharge any loan on the leasehold which was not authorized by CITY.

In the event of termination of this lease in accordance with the provisions of this Section (D) 21, LESSEE shall be under no obligation to restore the premises to the conditions which existed at the commencement of the term nor to demolish, destroy or remove any improvement or structure situated upon the premises.

City shall be under no obligation to compensate Lessee for improvements made without City's consent, which are not authorized by the provisions of this agreement nor for any improvements made after the date of notice of City's election to terminate this lease unless there shall have been an expressed agreement to the contrary.

22. FAITHFUL PERFORMANCE FOR CONSTRUCTION. Lessee shall file with City a faithful performance bond in the amount of 100% of the construction costs in cash or proper corporate surety bond satisfactory to City or in a combination of cash and said surety bond payable to City for loss resulting from failure to comply with said development plan of the Precise Plan as outlined in Paragraph 23 hereof, or payable to City for expenses incurred in performing itself said development plan or any portion thereof; or Lessee may deposit in escrow or in a trust fund or in any other manner acceptable to City, the said 100% of the construction costs, to be available for construction, improvements and furnishings on the Leased Premises and for reimbursement to City for its damages in the event of failure of Lessee to complete construction in accordance with the terms of this Agreement. The escrow or trust or other deposit shall specify that such amount is to be used exclusively for the purpose of improving said Leased Premises in accordance with the said development of the Precise Plan. In the event Lessee does not have on deposit the said amount to be used for such development, or the faithful performance bond or cash, this Lease may, at the option of City, be declared terminated and of no further force and effect, and that in the event of such termination, Lessee shall forthwith remove from the Leased Premises and shall have no further right or claim thereto, and shall have no right or claim to damages or compensation for any loss suffered by reason of such termination. Provided, however, Lessee may as an alternate file a bond as outlined above for each development phase of the Precise Plan at least thirty (30) days prior to the scheduled commencement date. In the event Lessee fails to file said bond, then Lessee by execution of this Agreement hereby authorizes City to purchase said bond in the name of Lessee and to charge Lessee for the premium of said bond on the following month's rent.

23. PRECISE PLAN OF DEVELOPMENT. The development of the leased premises shall be in accordance with the Precise Plan approved by City Manager, which plan is filed in the Office of the City Clerk as Document Number 732105. Said Precise Plan, among other things, is to show the design, materials of constructions, elevations and colors of all structures; the plot plan of all structures and above ground improvements; the uses of all facilities; the schedule of development; the financing plan and such other factors as are necessary or desirable in opinion of City Manager. No changes shall be made to said approved Precise Plan without the written approval of the City Manager.

24. ANTI-DISCRIMINATION. Lessee shall not discriminate in any manner against any person or persons on account of race, color, creed or national origin 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.

25. RULES AND REGULATIONS. Lessee shall abide by and conform to any and all rules and regulations now or hereafter adopted by the City Council of the City of San Diego, and such additional rules and regulations as prescribed by the City Manager or his authorized representative, governing or relating to any activity conducted on Montgomery Field, and to the following conditions:

- a. Lessee, in the operations to be conducted pursuant to the provisions of this lease and otherwise in the use of the airport, will not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed or national origin in any manner prohibited by Part 15 of the Federal Aviation Regulations or any amendments thereto.
- b. Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

- c. Lessee shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, creed, color or national origin.
- d. Non-compliance with Provisions 1, 2, and 3 above shall constitute a material breach thereof and in the event of such non-compliance the City shall have the right to terminate this lease and the estate hereby created without liability therefore or at the election of the City or the United States either or both said Governments shall have the right to judicially enforce said Provisions 1, 2, and 3.
- e. Lessee agrees that it shall insert the above four Provisions in any lease (agreement, contract, etc.) by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.
- f. The City reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance.
- g. The City reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.
- h. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States, relative to the development, operation or maintenance of the airport.
- i. Lessee shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
- j. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act.
- k. This lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or natural emergency.

26. CONFLICT WITH RULES. Lessee shall not conduct the operations permitted by this Agreement in a manner which conflicts in any way with rules and regulations issued by the Federal Aviation Agency or the Civil Aeronautics Board, or any other governmental authorities having appropriate jurisdiction.

27. SUBORDINATION TO GOVERNMENT AGREEMENT. This lease shall be subordinate to the provisions of any existing or future agreement between City and the United States or other governmental Agency relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of funds for the development of the airport. In the event such subordination results in Lessee's being unable to operate the businesses on the lease premises, or if the operations permitted under this agreement are materially affected during such period or periods as such subordination shall be in force, City agrees to make a reasonable reduction or adjustment in connection with the rental herein agreed to be paid by Lessee and Lessee agrees, that damages if any, claimed by the Lessee shall be limited to any abatement of the rental required to be paid under this agreement. City agrees to furnish Lessee with a

copy of any agreement between the City and any governmental agency relative to the operation or maintenance of the airport which may affect Lessee under terms and conditions of this Paragraph 27.

28. CONTROL OF AIRCRAFT PARKING. Lessee shall control all aircraft parking on the leased premises and at no time shall any aircraft, vehicles or other object, including refuse, under Lessee's control be allowed to obstruct any designated taxiways. It shall be the responsibility of the Lessee to require that all aircraft under his control be parked only on the leased premises.

29. EMINENT DOMAIN-CONDEMNATION. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of City and Lessee in the award or consideration for such transfer and the effect of the taking or transfer upon this lease agreement shall be as follows:

- a. In the event of such taking or transfer of only a part of the leased premises leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of the City for the conduct thereon of the operations permitted hereunder, this Lease shall terminate and end as to the portion of the premises so taken or transferred as of the date title to such portion vests in the condemning authority but shall continue in full force and effect as to the portion of the leased premises not so taken or transferred and from and after such date the rental required to be paid by Lessee to City in and by Section (C) of this lease shall be reduced in the proportion to which the area so taken or transferred bears to the total area of the demises premises.
- b. In the event of the taking or transfer of only a part of the leased premises leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable in the opinion of City, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken or transferred vests in the condemning authority.
- c. In the event the entire leased premises are taken or so transferred, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken or transferred vests in the condemning authority.
- d. In the event of any taking or transfer under Sections a, b or c hereof, Lessee shall not be entitled to any award of compensation except for the taking of buildings, fixtures, equipment and improvements which but for the effect of the condemnation would be owned by Lessee or by reason of the relocation of the same.

30. ORAL REPRESENTATIONS. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein, and, further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

31. HOLDING OVER. Any holding-over after the expiration of said term for any cause shall be construed to be a tenancy from month to month, at any rental selected by City which has been in effect during the term, and shall otherwise be on the terms and conditions herein specified so far as applicable. Such holding-over shall include any time employed by Lessee in removing fixtures and improvements as hereinbefore provided.

32. HOLD HARMLESS. City, its agents, officers and employees, shall not be, nor be held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee or any of the Lessee's representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other persons whatsoever, nor for personal injuries to, or deaths of them, or any of them, whether caused by or resulting from any acts or omission of Lessee in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. Lessee further agrees to indemnify and save free and harmless City and its authorized agents, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by City on account of any claim or claims therefor.

33. TAXES. Lessee shall pay and discharge before delinquency all taxes and assessments which may be levied during said term upon the demised premises by reason of Lessee's leasehold interest.

34. ADVERTISING. No signs of any kind may be placed or painted on the leased premises or anywhere on Montgomery Field without prior approval of City Manager.

35. LEGAL PROCEEDINGS. Should it become necessary for the City to commence legal proceedings to enforce any provision of this lease, Lessee shall pay all fees, costs, and expenses of such proceedings, including a reasonable sum as attorney's fees.

36. PETROLEUM PRODUCTS. Sale of aviation petroleum products and servicing of aircraft shall be confined to the leased premises, or at other locations on the airport under terms and conditions which may be prescribed by the Airports Director.

At anytime after the first ten (10) year period of this agreement, City may, at City's option, terminate Lessee's right to sell aviation fuel and oil to the general public upon thirty (30) days written notice to Lessee. City shall not incur any costs, damages or liabilities as a result of said termination by the City.

IN WITNESS WHEREOF, this Lease Agreement is executed by the City of San Diego, acting by and through the City Manager, under and pursuant to Resolution Number 199812 authorizing such execution, and Lessee has caused this Agreement to be executed and its corporate name and seal to be affixed by its proper officers the day and year first hereinabove written.

THE CITY OF SAN DIEGO

Date May 19, 1970

By Mario L. Edelblute
Asst. City Manager

GIBBS FLYING SERVICE, INC.

Date _____

By Wm. Gibbs Jr. - Pres.

By _____

I HEREBY APPROVE the form and legality of the foregoing Lease Agreement this 27 day of May, 1970.

JOHN W. WITT, City Attorney

By Clifton Reed
Deputy