

THE CITY OF SAN DIEGO

and

INTERNATIONAL AERO CLUB, L.L.C.

Flat Rate Lease

**Restaurant Viewing Area
(.22 ac., North side of MYF)**

Commencement Date May 10, 1998

DOCUMENT NO. 00-18537

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**OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA**

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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 INTERNATIONAL AERO CLUB, L.L.C., 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 containing .22 acres of vacant land located on the northerly side of Montgomery Field Airport, situated in the City of San Diego, County of San Diego, State of California, delineated on Exhibit "A", 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. LESSEE owns and operates the 94th Aero Squadron Restaurant "the restaurant", located at 8885 Balboa Avenue, which is adjacent to the premises. It is expressly agreed that the premises are leased to LESSEE for use as a landscaped, fenced public viewing area for restaurant patrons, with a gate for access to adjacent public aircraft tiedown spaces, 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.

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.

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.

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 the approved uses in Section 1.2 Uses, above, and related activities in a fiscally responsible manner.
- 1.7 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.
- 1.8 Parking. Vehicle parking or aircraft tiedowns are not approved uses in this agreement.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement is ten years, commencing on May 10, 1998 and expiring on May 9, 2008. "Lease year" as used in this lease shall mean the 12-month period commencing on the lease commencement date.
- 2.2 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain permit executed on the tenth day of May, 1977 with Specialty Restaurant Corporation Document 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.
- 2.3 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.
- 2.4 Quitclaim and Surrender of LESSEE'S Interest. LESSEE relinquishes its ownership of the premises and any of its improvements to CITY upon executing this lease agreement, at no cost to CITY. Within 14 days after

written demand from CITY, LESSEE shall provide CITY with a recordable quit-claim deed for the premises, including the helipad and all improvements.

SECTION 3: RENT

3.1 Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should 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 or other location specified by CITY in writing to LESSEE.

3.2 Rent

- a. Rent Amount. The initial annual rent is One Thousand, Four Hundred Dollars (\$1,400), which is due and payable in advance on the first day of May of each lease year. The rent in the first and last years of the lease shall be prorated to correspond with the respective lease commencement and termination dates. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. (1) CPI Index Adjustments. On May 1, 2000 and on the first day of May every two years thereafter of the lease term, the rent shall be adjusted to reflect increases or decreases in the Consumer Price Index (CPI) for the preceding two-year period.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, 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 above.

(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 adjustments determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

(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 the index figure published for the full month of April, 1998.

To illustrate, if the figure for April, 1998 was 110, then 110 would be the "base figure" for the first CPI adjustment (Example 1).

The "current index" shall be the index figure for the month preceding the rent adjustment date. For instance, if the rent adjustment date is May 1, 2000, we would use the index figure for April, 2000, and if that index were 121, the "current index" for the adjustment would be 121, as shown in Example 1 below:

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).

- 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 payment of rent be less than Ten Dollars (\$10).
- 3.4 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.

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 net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with a City-approved development plan. 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 attorney's fees and such 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 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 there is also substantial benefit to the CITY therefrom. LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve or disapprove 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, the 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 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 condition hereof.

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, shall fail to commence to cure the default(s) within said thirty-day 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 4.4, Defaults and Remedies, hereof, 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 that 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 period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

(1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.

(2) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.

(3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

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 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, subject to applicable statute of limitations, 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 remainder 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 Robert Basso, SR. to the extent of 51 percent of the issued stock of said corporation, and they shall,

as co-executives, 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 a 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 49 percent shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment & Subletting, 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.

4.7 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.

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, invitee, guests, 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 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 each in the amount of not less than One Million Dollars (\$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 CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

This insurance is subject to the same requirements, restrictions and penalties in the event of failure to provide or maintain as detailed under the insurance provision of this lease.

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 cash security deposit shall be paid to the CITY by LESSEE in the sum of One Thousand, Four Hundred Dollars (\$1,400) 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. NONE required with this lease.

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

in the premises.

- 6.2 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 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 shall keep the premises attractively landscaped and improvements, including landscaping, irrigation system, gate and fence maintained, at LESSEE's expense, throughout the term of this agreement to the CITY's satisfaction. LESSEE shall maintain the premises in a decent, safe, healthy, and sanitary condition at all times.
- 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
- 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.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises exceeding an estimated cost of \$10,000, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed.
- 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 to comply with the approved Signage Program for Montgomery Field Airport, and LESSEE shall not 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. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE or others 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.

6.11 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, or 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 City Clerk's Office as City Clerk Document 769704.

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 the 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, damage 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 the CITY.

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:

Deputy Director of Airports
City of San Diego
Real Estate Assets Department, Airports Division
3750 John J. Montgomery Drive
San Diego, CA 92123

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 Equal Opportunity. LESSEE shall 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 hereinafter 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 CITY request, LESSEE will submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth 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 be inserted in all subleases and all subcontracts for

any work covered by this lease so that such provisions will be binding upon each sublessee and subcontractor.

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

LESSEE acknowledges that the CITY seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE is encouraged to solicit applications for employment, bids and proposals for subcontracts, and work associated with this lease from local residents and firms as opportunities occur. LESSEE is encouraged to hire qualified local residents and firms.

- 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 attorney's 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 enforce ability 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 shall 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 is 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.

SECTION 8: SPECIAL PROVISIONS

- 8.1 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.
- 8.2 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 8.3 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 8.4 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.
- 8.5 No Warranty. CITY does not warrant that said premises are suitable for the purposes for which they are leased as stated herein.

SECTION 9: AIRPORT PROVISIONS

- 9.1 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.
- 9.2 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.

- 9.3 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.
- 9.4 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.
- 9.5 Height Limitation. LESSEE and LESSEE'S successors, sublessees and assigns agree not to erect or permit any structure or tree on the premises that exceeds either CITY or FAA restrictions or advisory limiting height on the premises. LESSEE shall keep all trees trimmed to the height limitation established by FAA, at its expense.
- 9.6 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 Field Airport.
- 9.7 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 Field Airport.
- 9.8 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.
- 9.9 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).

9.10 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.

9.11 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.

- 9.12 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.
- 9.13 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.
- 9.14 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.
- 9.15 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.
- 9.16 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.
- 9.17 Aircraft Parking. Aircraft tiedowns are not an approved use in this agreement.
- 9.18 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.

9.19 Minority Business Policy

- a. 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.
- b. Developer will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practice Act, and any other applicable federal and state laws and regulations hereinafter enacted. Developer will not discriminate based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth against any employee, applicant for employment, or firm seeking to conduct business with developer.

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

[illegible]

EXHIBIT A

PREMISES:

0.22 AC. of MYF - behind
8885 Balboa Avenue

SECTION 10. SIGNATURES

10.1 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 JUN 29 1998

By [Signature]
Acting Real Estate Assets Dir.

LESSEE:

Date Apr. 2, '98

By [Signature]

APPROVED as to form and legality this 6th day of July, 1998

CASEY G. GWINN, City Attorney

By [Signature]
Deputy City Attorney

a: lsint.aer 3-27-98

ORDINANCE NUMBER O- 18537 (NEW SERIES)

ADOPTED ON JUN 29 1998

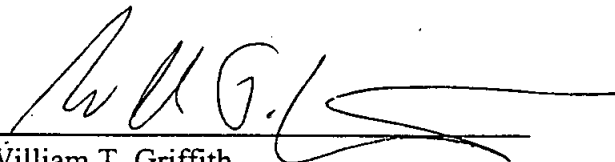
AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A LEASE AGREEMENT WITH INTERNATIONAL
AERO CLUB, L.L.C., FOR A .22 ACRE AIRPORT
VIEWING AREA LOCATED ON MONTGOMERY FIELD
AIRPORT.

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

Section 1. That the City Manager is authorized to execute, for and on behalf of The City of San Diego, a lease agreement with International Aero Club, L.L.C., for a .22 acre airport viewing area located on the north side of Montgomery Field Airport, for a term of 10 years, at an initial annual rent of \$1,400, which amount is consistent with the Approved Aviation Rental Rates for Montgomery Field, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. OO- 18537.

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

APPROVED: CASEY GWINN, City Attorney

By 
William T. Griffith
Deputy City Attorney

WTG:cdk
05/13/98
Or.Dept:REA
Job:253223
O-98-129
Form=leaseo.frm

Passed and adopted by the Council of The City of San Diego on
JUN 29 1998 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS, McCARTY,
VARGAS, AND 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: Myrna Skelley, Deputy

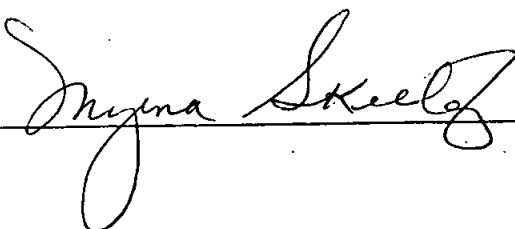
I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18537 (New Series) of The City of San Diego, California.

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
JUN 15 1998 and on JUN 29 1998.

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: , Deputy

Hearing 6-9-98

READ# 23-AIR

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

I-33
Cont. to 6-15-98
6-29-98
7-55
Consent

TO:

CITY ATTORNEY

2. FROM: (Originating Department)

REAL ESTATE ASSETS DEPARTMENT

3. DATE

April 17, 1998

4. SUBJECT:

LEASE AGREEMENT WITH INTERNATIONAL AERO CLUB, LLC

O# 18537

5. FOR INFORMATION CONTACT: (NAME & MAIL STA.)

T.L. Williams/Diana L. Drake MS 14

6. TELEPHONE NO.

573-1426

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORT"



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND

DEPT.

ORGANIZATION

OBJECT

JOB ORDER

C.I.P. NO.

AMOUNT

9. ADDITIONAL INFORMATION / ESTIMATED COST:)

None

cc: Docket

Job: 253223

Thomas Bros. Map Page 1249 D2

10. ROUTING AND APPROVALS

ROUTE (/)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (/)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
X	Department Manager	Robert K. ...	4/24/98	X	CITY MANAGER LOVELAND	[Signature]	5.6.98
X	Deputy Director Airports	[Signature]	4-22-98		AUDITOR	[Signature]	
X	DEP/EAS	[Signature]	5/1/98	X	CITY ATTORNEY	[Signature]	5.11.98
X	EOCP	[Signature]	5/5/98	X	ORIGINATING DEPARTMENT	[Signature]	5/19/98
					MGR. DOCKET COORD. _____	COUNCIL REP. _____	
				✓	RULES COMMITTEE		
					☐ CONSENT ☐ ADOPTION ☐ Refer to _____ ☐ Date _____		

11. PREPARATION OF:

☒ RESOLUTION(S)

☒ ORDINANCES(S)

☐ AGREEMENT(S)

☐ DEED(S)

Authorize the City Manager to approve the lease.

11a. MANAGER'S RECOMMENDATION:

Adopt the Resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 9.20 FOR INFORMATION ON COMPLETING THIS SECTION).

COUNCIL DISTRICT(S):

6

COMMUNITY AREA(S):

Kearny Mesa

CITY CLERK INSTRUCTIONS: DO NOT RECORD. Deliver documents to Diana Drake, MS 14, for further handling.

ENVIRONMENTAL IMPACT: This action is exempt per CEQA Section 15301, Class I, Existing Facilities of the State of California Guidelines.

OTHER ISSUES:

None

DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

DATE

April 17, 1998

SUBJECT LEASE AGREEMENT WITH INTERNATIONAL AERO CLUB, LLC

BACKGROUND:

This ten-year lease replaces a renewable one-year permit that was executed in 1977 between the CITY and Specialty Restaurant d.b.a. as 94th Aero Squadron (restaurant). On approximately December 12, 1997, Specialty Restaurant sold the restaurant and assigned its permit to LESSEE with the CITY's consent. The remaining term on the permit expires on May 9, 1998. The premises is landscaped and used by the restaurant as an airport viewing area for its customers and as an access to adjacent public aircraft tiedowns.

This is the highest and best use for the premises, because of its limited access.

BASIC TERMS AND CONDITIONS OF THIS AGREEMENT:

Premises: .22 acres on the north side of Montgomery Field Airport.

Lease Term: Ten years, commencing on May 10, 1998.

Flat-Rate Rent: The initial annual rent is \$1,400, which is consistent with the approved Aviation Rental Rates for Montgomery Field. The rent will be adjusted periodically to reflect changes in the Consumer Price Index (CPI).

Security Deposit: \$1400.

Use: Fenced airport viewing area and access to aircraft tiedowns.

Maintenance: LESSEE shall maintain the improvements to CITY's satisfaction, at LESSEE's expense.

The lease contains all other standard CITY lease terms and conditions.

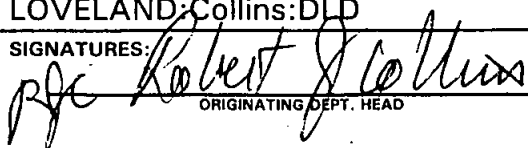
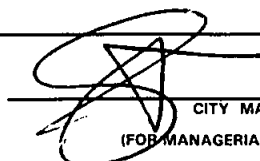
Conclusion: By CITY approving this agreement, the restaurant will be able to continue using the airport viewing area, and the CITY shall continue receiving revenue from an otherwise unusable area.

FISCAL IMPACT: Initially, the Airports Enterprise Fund will receive \$1,400.00 annually with periodic (CPI) adjustments thereafter.

BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/AUTHOR INITIALS)

LOVELAND:Collins:DLD

SIGNATURES:


ORIGINATING DEPT. HEAD
CITY MANAGER:
(FOR MANAGERIAL DEPARTMENTS ONLY)