

COPY

THE CITY OF SAN DIEGO

Flat Rate Lease

LESSEE Sublets part of this back to City for
Police Helipart. Police Lease is Administered
by R.E. Asset Mgt. Dept.

DOCUMENT NO. RR 273253

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEASE OUTLINE

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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 GIBBS FLYING SERVICE, INC., a California corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as areas 1-A, 1-B and 2-A at Montgomery Field Airport and as described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of construction, operation and maintenance of a fixed base flying service, including sales and rental of aircraft, aircraft parts and accessories, aircraft engine and aircraft repair, flight instruction, renting aircraft storage and tiedown space, operating an aircraft charter, air taxi and flight service, sale of aeronautical supplies, sale of aviation petroleum products to the general public 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.

1.03 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.

1.04 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.

1.05 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.

1.06 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 a fixed base operation and related activities in a fiscally responsible manner.

1.07 Parking. Parking of vehicles of invitees or customers of LESSEE while using the premises is permitted. However, the storage of automobiles, trucks, trailers, mobile homes, motor homes, etc., is hereby prohibited, except for service or fueling vehicles used by LESSEE on a daily basis to perform services at the airport.

SECTION 2: TERM

May 1, 1989

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2.01 Commencement. The term of this agreement shall commence on the first day of the calendar month following execution by the City Manager and shall terminate on May 31, 1990. The LESSEE may, if this lease has not been previously terminated and is not then in default, extend the term of this lease for three additional periods of five (5) years each upon the terms and conditions herein set forth and as set forth in the lease between the CITY and Gibbs Flying Service, Inc., Document 732107 as amended and as may be 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.

If for any reason whatsoever the lease between the CITY and Gibbs Flying Service, Inc., Document 732107 is terminated, this lease shall also be terminated simultaneously.

2.02 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.

2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: RENT

3.01 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.

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

3.02 Rent.

- a. Rent Amount. The initial rent is Two Hundred Sixteen Dollars (\$216) per month. 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.

In addition, all gross income received by LESSEE under the terms of this lease shall be subject to the same percentage rates described in LESSEE'S Lease Agreement, City Clerk Document 732107.

- b. (1) CPI Rent Adjustments. At the termination of this lease and prior to entering the first 5-year option period and prior to entering each of the two additional 5-year option periods, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

1st 6/1/90-95

See C. *2nd 6/1/95-2000

3rd 6/1/2000-2005

Commences 5/1/89

Terminates 5/31/90

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 1982-1984, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

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

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1) CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. 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 a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

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

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

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

Example 1

Current Index $\frac{121}{110} = 1.10$ (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index $\frac{138}{121} = 1.14$ (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).

- 6/1/2000
- c. Market Value Adjustments. In addition to said CPI adjustments, at the end of the second option period, the rent for the ensuing 5-year option period, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the

event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept, and be bound by the valuation determined by the selected or appointed appraiser.

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

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by

LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent, as established by periodic appraisals as provided for herein, be less than the rent in existence immediately prior to the adjustment date.

3.03 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.

3.04 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

4.01 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.

4.02 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, except that the leasing of aircraft tiedown and hangar space in the normal course of LESSEE'S business is exempted. 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.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The rights of assignment contained herein are further subject to Section 4.07, Additional Consideration to CITY, hereof.

4.03 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. 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.

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. 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.

4.04 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 4.04a.(1) Default 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.

4.05 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.

4.06 Control by Specified Individuals or Entities. The corporation named herein as LESSEE shall remain owned and control by The Gibbs Family Trust; at least 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 said 51 percent shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.02, Assignment and 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.

4.07 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums of money for the maintenance of Montgomery Field Airport areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent airport areas. Therefore, LESSEE and CITY agree that in the event of an assignment; in the event of a subletting of the majority portion

of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements of this lease, have been constructed, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances regarding claims and judgements. Prior to CITY'S consent to any assignments, majority subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph together with an acknowledgement from the proposed assignee, sublessee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction be it an assignment, a sublease or a refinancing. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Exceptions to assignments as described in Section 4.02.
- c. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged; such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to the leasehold as an asset, or the income produced thereby.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE shall at all times relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;
- b. any operation, use, or occupation conducted on the premises;
- c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance 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.
- b. Fire, extended coverage; and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.03, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

c. Conditions. 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.

d. 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.

e. 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.

f. 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 f., 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.

- 5.03 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 5.02, 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.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 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.
- 6.02 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.

6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with and with all applicable laws.

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

6.05 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.

6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 110 percent of the estimated construction cost

of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

6.07 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.

6.08 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.

6.09 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures, and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or

delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.12 Hazardous/Toxic Waste. LESSEE will not allow the installation 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 filed in the Office of Deputy Director of Airports and by this reference incorporated herein.

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

LESSEE agrees to assume the defense of, indemnify and hold 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 sub-lessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

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

SECTION 7: GENERAL PROVISIONS

7.01 Notices

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

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

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

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

7.02 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.

7.03 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.

7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap 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.

7.05 Equal Opportunity. LESSEE agrees to abide by CITY'S Equal Opportunity Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Equal Opportunity Program each year.

7.06 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.

7.07 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.

7.08 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.

7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.

7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

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

7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease 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 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

7.13 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.

- 7.14 Planting Strips. LESSEE shall, at its sole cost, landscape and maintain all areas shown on the attached plat adjoining the leased premises.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.16 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain permit executed on the sixth day of May 1982 with Gibbs Flying Service, Inc., which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.17 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire leased premises.
- 7.18 Warranty. CITY does not warrant that said premises are suitable for the purposes for which they are leased as stated herein.

SECTION 7: AIRPORT PROVISIONS

- 7.19 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.
- 7.20 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.
- 7.21 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 Field 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.

- 7.22 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.
- 7.23 Height Limitation. LESSEE and LESSEE'S successors, sublessees and assigns agree not to erect or permit any structure or tree on the premises to reach a mean-sea level elevation of 450 feet. If this covenant is breached in any way, CITY reserves the right to enter the premises and remove the structure, object, or tree, at the expense of LESSEE.
- 7.24 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.
- 7.25 War or National Emergency. In the event of war or national emergency, this lease and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of Montgomery Airport.
- 7.26 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.
- 7.27 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).
- 7.28 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.
- 7.29 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.

7.30 Affirmative Action. LESSEE, LESSEE'S successors, assigns, sublessees, and any suborganizations agree to undertake an affirmative action 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.

7.31 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.

7.32 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.

7.33 Hangar Keeper's Insurance. LESSEE agrees to maintain the following insurance at its sole expense, during the term of this lease: Hangar Keeper's Insurance sufficient to cover any aircraft hangared for others.

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.

7.34 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.

7.35 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.

7.36 Aircraft Parking. LESSEE shall require that all aircraft under its control be parked only on the leased premises, except as otherwise provided by the direction of the City Manager. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE'S control, be allowed to obstruct any designated taxiways.

7.37 Minority Business Policy. If LESSEE receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and LESSEE'S contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation-assisted contracts.

SECTION 8: SIGNATURES

8.01 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

4/29/89

By

[Signature]
ASSISTANT TO THE City Manager

LESSEE: Gibbs Flying Service, Inc.

Date

JANUARY 17, 1989

By

William Gibbs, Vice President

By _____

APPROVED as to form and legality this 5 day of May, 1989

JOHN W. WITT, City Attorney

By

[Signature]
Deputy City Attorney

GEK:baa(5)61
12-8-88

R 273253

9.01 Legal Description

All that area shown as Areas 1-A, 1-B and 2A on attached Exhibit A and located on Montgomery Field Airport in the City of San Diego, County of San Diego, State of California.



No	SCALE
----	-------

272

25'E 729.28

71

N 89° 21' 28" E 1463.11' ±

AERO

DRIVE

$N 90^{\circ} 32' 23'' W$

AREA
D.11

Police Handg

53.17

32' 23" W 576.53'
DRAINAGE SWALE OF
POR LOT 21
N1017.38"E 30'

13707

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO: CITY ATTORNEY

2. FROM: (ORIGINATOR)

Property/General Services, Airports Division February 13, 1989

3. DATE

4. SUBJECT:

LEASE - GIBBS FLYING SERVICE, INC., MONTGOMERY FIELD

5. PREPARATION OF:

☒ RESOLUTION(S)

☐ ORDINANCE(S)

☐ AGREEMENT(S)

☐ DEED(S)

Authorize the City Manager to execute a flat rate lease with Gibbs Flying Service for a 1.25 acre site immediately north of their existing lease area on Montgomery Field. The proposed lease area is to be used in combination with Gibbs existing commercial aviation facility at Montgomery Field for a term beginning on the first day of the month following execution by the City Manager and continuing until May 31, 1990, with the option to extend the lease for three additional five-year periods.

COUNCIL DISTRICT: 5

COMMUNITY AREA: Kearny Mesa

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".)

ACTION REQUESTED BY: Property Director

ENVIRONMENTAL ASSESSMENT: This action is exempt per CEQA, Section 15301 B3, of State California Guidelines.

CONSIDERATION: The rent shall be \$216 monthly (\$2592 annually) with CPI adjustments prior to each option period in addition to percentages of gross income as required in the master lease.

HANDLING: DO NOT RECORD Deliver documents to Gerald E. Kretovics, M.S. 14, for further handling.

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

Gerald E. Kretovics

MS 14

8. TELEPHONE NO.

236-6496

9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☐

10. COMPLETE FOR ACCOUNTING PURPOSES:

	BUDGETED	UNBUDGETED
FUND/DEPT.		
ORGANIZATION		
OBJECT ACCOUNT		
JOB ORDER		
WORK ORDER NO.		
C.I.P. NO.		
FACILITY		
AMOUNT		

ROUTING AND APPROVALS

ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
✓	DEPARTMENT DIRECTOR	<i>[Signature]</i>	2/14/89
X	PROPERTY CLEARING AUTH. General Ser.	<i>[Signature]</i>	3/6/89
X	CLEARING AUTH. EQD	<i>[Signature]</i>	3/9/89
X	CLEARING AUTH. Airports	<i>[Signature]</i>	2/13/89
X	CLEARING AUTH. Financial Mgmt.	<i>[Signature]</i>	3-4-89
	CLEARING AUTH.		
X	DEPUTY CITY MANAGER	<i>[Signature]</i>	3-15-89
X	AUDITOR	<i>[Signature]</i>	3-15-89
X	CITY ATTORNEY	<i>[Signature]</i>	3/21/89
X	ORIGINATING DEPARTMENT	<i>[Signature]</i>	3-21-89
✓	Mgr. Dkt. Clerk		
	Council Rep.		

cc: X Docket Redi Book pg. 352
Thomas Bros. Map pg. 53/E2
Job 252122-001

RULES COMMITTEE ☐ CONSENT ☐ ADOPTION
☐ Refer to _____ Date _____

DOCKET REPORTING INFORMATION
CITY OF SAN DIEGO

DATE:
February 13, 1989

SUBJECT:

Lease - Gibbs Flying Service, Inc., Montgomery Field

BACKGROUND: (DOUBLE SPACE)

Gibbs Flying Service has leased Lots 1 and 2 at Montgomery Field since the City acquired the airport from Mr. William Gibbs in 1948. The northerly edge of Gibbs' lease was formerly the Building Restriction Line (BRL). When the Airport Master Plan was approved, the BRL was moved 50 ft. northerly creating a hiatus between the new BRL and Gibbs' existing lease line. A permit to use this 50-ft. (43,800 sq. ft.) wide area was issued to Gibbs Flying Service in 1982.

This proposed lease will replace the existing permit and includes a new 11,700 sq. ft. tie-down area (54,450 sq. ft. total). The San Diego Police Department wishes to lease a hangar on Gibbs' master lease area and the proposed aircraft parking apron created by this lease for its Air Surveillance Unit.

The term of this proposed lease will coincide with the existing term and the three five-year option periods contained in Gibbs Master Lease. The proposed rent is \$216 per month (\$2,592 annually) with CPI adjustments at the beginning of each five year option period, plus percentage rents as contained in the master lease. Gibbs Flying Service has paid the City an average of \$125,107 per year over the last 4 years for its 4 leases.

FISCAL IMPACT: A minimum of \$2,592 per year will be deposited to the Airports Enterprise Fund 41100.

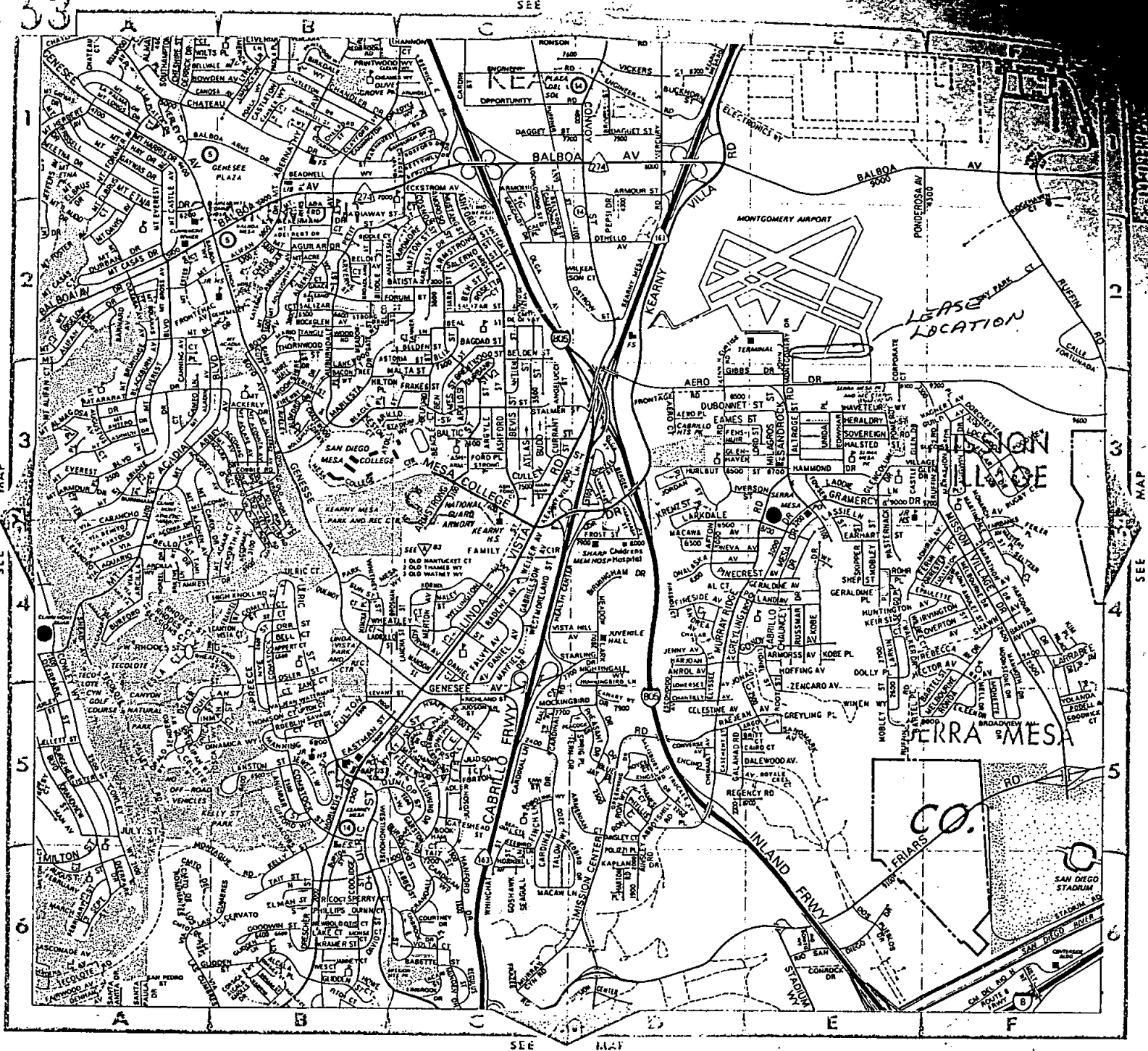
BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/AUTHOR INITIALS)

STAPLETON/SPOTTS/FLYNN/GEK

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)



(R-89-1888)

RESOLUTION NUMBER R- 273254

ADOPTED ON APR 17 1989

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a one-year lease agreement (with two options to extend for two years each, and three options to extend for one year each) with GIBBS FLYING SERVICE, INC., a California corporation, for use by the Police Department's Air Support Unit of an aircraft hangar at Montgomery Field, at a rent of \$2,894 per month, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 273254

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$14,470 from Fund 10132, Seized and Forfeited Assets, for FY 1989, is hereby authorized and approved.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/31/89
Or.Dept:Prop.
Aud.Cert:8900822
Job:220687
R-89-1888
Form=r.none

Passed and adopted by the Council of The City of San Diego on
April 17, 1989 by the following vote:

YEAS: Wolfsheimer, Roberts, McColl, Pratt, Struiksma, Henderson,
McCarty, Filner, O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 273253, passed
and adopted by the Council of The City of San Diego, California
on APR 17 1989.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Ellen Bovard, Deputy

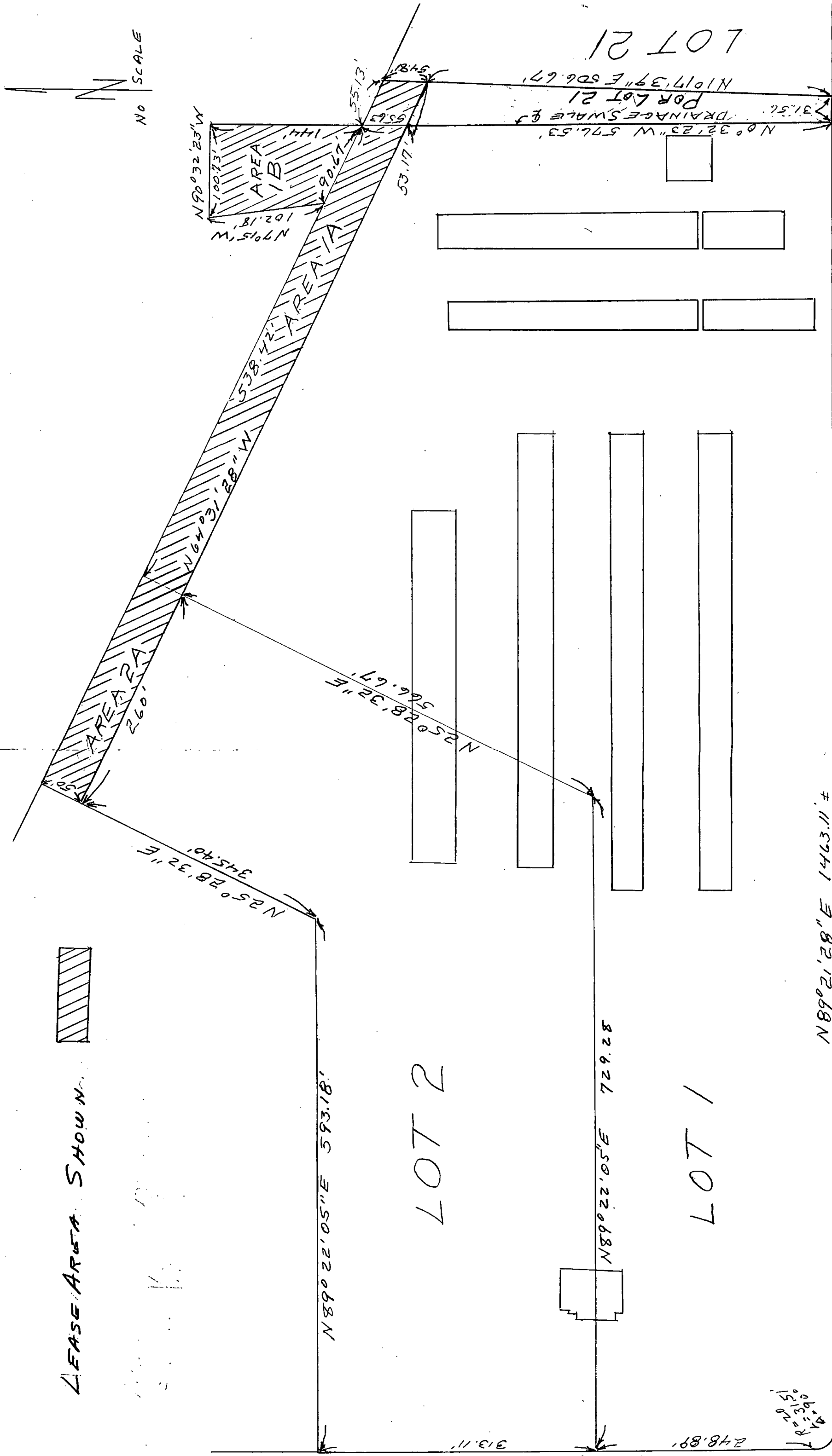
$N 0^{\circ} 37' 55'' W$

31.3.11

$\begin{matrix} 1 \\ R = 31.5^\circ \\ Y = 29.0^\circ \end{matrix}$

N 89° 21' 28" E 1463.11' ±

AERO DRIVE





THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

December 4, 2008

Mr. Buzz Gibbs
Gibbs Flying Service, Inc.
8906 Aero Drive
San Diego, CA 92123

RE: Gibbs Flying Service Inc. Lease Agreement with City, as Filed in City Clerk's Office as
Doc. #RR-273253

Dear Mr. Gibbs:

The Gibbs lease at Montgomery Field Airport has been on holdover status since June 1, 2005.

As you know, the City Airports Division is in the process of planning the future configuration of aviation activities at Montgomery Field. There are several factors that are still unknown, such as environmental constraints and the near term economic climate. Until such time that we have a better picture of the options available to us and the economy improves, we propose to extend the holdover of your lease agreement. This will give you an extended planning and maintenance horizon and we will be able to determine the highest and best use of the leasehold in the future.

Pursuant to Paragraph 31 of the Lease Agreement, the lease will continue on holdover status until at least May 31, 2010. All other terms and conditions will remain the same, however rent may be adjusted to reflect current fair market rates. We appreciate and value your continued tenancy at Montgomery Field. If these terms are acceptable to you, please acknowledge by returning a signed copy of this letter.

If you have any questions, please don't hesitate to call me at (858) 573-1433.

Sincerely,

Christian Anderson
Airport Development Coordinator

cc: Michael C. Tussey, Deputy Director Airports

Signed: _____

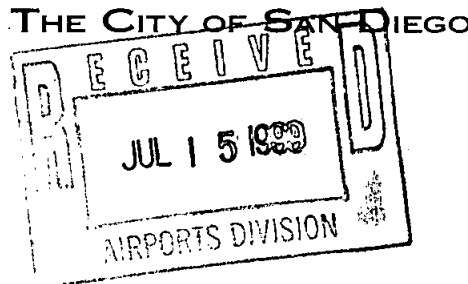
William "Buzz" Gibbs
Gibbs Flying Service, Inc.

Date: _____



Airports

Montgomery Field Airport • 3750 John J. Montgomery Drive • San Diego, CA 92123-1769
Tel (858) 573-1425 Fax (858) 279-0536



July 6, 1999

Mr. Buzz Gibbs
Gibbs Flying Service, Inc.
8906 Aero Drive
San Diego, CA 92123

Re: Exercise of Option-Lease Agreement between City and Gibbs Flying Service,
Lease Document No. RR-732107, as amended, and Flat-Rate Lease Document
RR-273253, both filed in the office of the City Clerk.

Dear Buzz,

In response to your letter, the City acknowledges and accepts your request to exercise your third and last option authorized in the subject leases. By exercising the third option, the termination dates for these leases will be extended from May 31, 2000 to May 31, 2005.

This letter will be filed in the office of the City Clerk and cross-referenced to your lease agreements. Diana Drake, Property Agent, will forward a copy of this letter, stamped with the document number, to you as soon as we receive our copy from the City Clerk. Please feel free to contact Diana at 573-1433, if you have any questions.

Sincerely,

TRACY L. WILLIAMS, A.A.E.
Deputy Director, Airport Division

cc: Penny Kincaid, Office of the City Clerk
Bill Svensson, Supervising Property Agent
Diana Drake, Property Agent, MYF
Norma Arroyo, Lease Billing Supervisor
County Assessor
City Auditor

DOCUMENT NO. C-09424
FILED JUL 13 1999
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA



Gibbs FLYING SERVICE, Inc.

8906 AERO DRIVE
MONTGOMERY FIELD
SAN DIEGO, CA 92123
(619) 277-0162

June 28, 1999

RECEIVED

JUN 29 1999

William T. Griffith, Director
Real Estate Assets
City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4199

Real Estate Assets Director

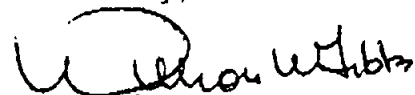
Re: Lease Agreement Dated May 19, 1970
Gibbs Flying Service, Inc.
Document No. 732107 as amended
Flat Rate Lease Dated April 29, 1989
Document RR- 273253

Dear Mr. Griffith,

Pursuant to Paragraph 2(B) of the above referenced Lease Agreement and Section 2.01 of the Flat Rate Lease, Gibbs Flying Service hereby exercises it's option to renew the lease term for the third additional five (5) year period, June 1, 2000 through May 31, 2005.

I remind you that pursuant to the Lease Agreement dated April 17, 1989, by and between Gibbs Flying Service and the City of San Diego, document RR-273254, with the exercise of the above third option term the City of San Diego has a lease extension rights also.

Sincerely,



William E. Gibbs

cc: Airports Director



THE CITY OF SAN DIEGO

April 26, 1999

Mr. Buzz Gibbs
Gibbs Flying Service, Inc.
8606 Aero Drive
San Diego, CA 92123

Re: Option to Extend City Lease Document RR-273254
City Police Air Support Facility at Montgomery Field Airport

Dear Mr. Gibbs:

The City of San Diego wishes to exercise its option to extend the above-referenced lease for an additional one year, covering the period of July 1, 1999 through June 30, 2000, in accordance with Section 3, paragraph 1.5 of the First Amendment to the Lease.

If you are agreeable to extending the lease, as requested, please authorize it by signing below on both copies of this letter. Keep the original copy for your files and return the duplicate copy to me.

Sincerely,

DIANA L. DRAKE,
Property Agent, MYF

Enclosure:

cc: Tracy L. Williams, AAE, Airports Deputy Director
Bill Svensson, Supervising Property Agent
Nancy Angus, Police Dept., M.S. 770

GIBBS FLYING SERVICE, INC.

Approval by: William Gibbs Date: May 5, 1999



Airports Division • Montgomery and Brown Fields

Real Estate Assets • Public Works • Main Office, 3750 John J. Montgomery Drive • San Diego, CA 92123-1769

Tel (619) 573-1425 Fax (619) 279-0536



THE CITY OF

SAN DIEGO

AIRPORTS DIVISION

MONTGOMERY AND BROWN FIELDS

Main Office

Montgomery Field Administration Building

3750 John J. Montgomery Drive

San Diego, California 92123-1769

Phone (619) 573-1425

Fax (619) 279-0536

REAL ESTATE ASSETS
DEPARTMENT

FILE: Gibbs Flying Service, Inc.

November 7, 1994

Mr. William Gibbs
Gibbs Flying Service
8906 Aero Drive
San Diego, CA 92123

RE: Exercise of Option-Lease Agreement between the City of San Diego and Gibbs Flying Service, Inc., Document No. 732107 filed on May 29, 1970 in the Office of the City Clerk, as amended, and Flat Rate Lease, filed April 24, 1989, as Document RR-273253.

Dear Mr. Gibbs:

Receipt of your letter dated October 11, 1994 is hereby acknowledged which expresses your desire to exercise the second of three five-year options authorized in the subject lease agreements.

The City of San Diego has no objection to your exercising the second five-year option commencing on June 1, 1995 and expiring on May 31, 2000. Should you have any questions, please call me at 573-1433.

Sincerely,

PETER R. SODERQUIST, A.A.E.
Deputy Director/Airports Division

PRS:DLD:dls

pc: ✓ Property Agent, MYF
MYF Airport Operations Manger
Jane Vickers, R.E. Asset Department
City Clerk
Lease Billing Supervisor
County Assessor

(a:optionlse)



DIVERSITY
BRINGS US ALL TOGETHER

Gibbs FLYING SERVICE, Inc.

8906 AERO DRIVE
MONTGOMERY FIELD
SAN DIEGO, CA 92123
(619) 277-0162

October 11, 1994

City Manager
City of San Diego
Attn: Property Director
City Administration Building
202 C Street, MS 95
San Diego, CA 92101-415

Re: Lease Agreement Dated May 19, 1970
Between the City of San Diego and
Gibbs Flying Service, Inc. Filed as
Document No. 732107 on May 29, 1970
in the Office of the City Clerk, as
Amended, and
Flat Rate Lease Dated April 29, 1989,
filed as Document RR-273253.

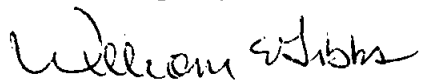
Gentlemen:

Pursuant to Paragraph 2(B) of the above Lease Agreement, and
Section 2.01 of the Flat Rate Lease Agreement, the undersigned
hereby exercises its option to renew the terms thereof for the
second additional five (5) year period (June 1, 1995 through May
31, 2000).

We remind you that pursuant to the Lease Agreement dated
April 17, 1989, by and between the undersigned and the City of
San Diego, filed as Document no. RR-273254 on April 17, 1989 in
the office of the City Clerk, you also have a lease extension
right.

Sincerely,

Gibbs Flying Service, Inc.



William E. Gibbs, Vice President

cc: Airports Director



THE CITY OF
SAN DIEGO

AIRPORTS DIVISION • MONTGOMERY AND BROWN FIELDS

Main Office • Montgomery Field Administration Building

3750 John J. Montgomery Drive • San Diego, California 92123 • Phone (619) 236-6496

GENERAL SERVICES DEPARTMENT

FILE: Gibbs Flying Service, Inc.

October 12, 1989

Mr. William Gibbs
Gibbs Flying Service
8906 Aero Drive
San Diego, CA 92123

RE: Exercise of Option-Lease Agreement between the City of San Diego and Gibbs Flying Service, Inc., Document No. 732107 filed on May 29, 1970 in the Office of the City Clerk, as amended, and Flat Rate Lease, filed April 24, 1989, as Document RR-273253.

Dear Mr. Gibbs:

Receipt of your letter dated August 28, 1989 is hereby acknowledged which expresses your desire to exercise the first of three five-year options authorized in the subject lease agreements.

Inasmuch as both your leases are current, the City of San Diego has no objection to your exercising the first five-year option commencing on June 1, 1990 and expiring on May 31, 1995. Should you have any questions, please call Mr. Gerald Kretoivics at 236-6496.

Sincerely,

Carole A. Brock
Supervisor, Airports Leasing

CAB:GEK:pi

cc: County Assessor
MYF Airport Operations Manager
Bill Svensson, Property Department
Susan Drake, Auditor's Office