



**CITY OF SAN DIEGO
LEASE AGREEMENT**

Between

**THE CITY OF SAN DIEGO,
a California municipal corporation**

And

**DANIELS AVIATION INC.,
a California corporation**

Location: Montgomery Field Airport

CITY OF SAN DIEGO LEASE AGREEMENT

THIS CITY OF SAN DIEGO LEASE AGREEMENT ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and DANIELS AVIATION INC., a California corporation ("LESSEE"), as lessee, to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

1. PREMISES

- 1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that certain improved real property (the "Premises") described as approximately one hundred and ninety square feet (190) known as Suite D in the terminal building situated at 3750 John J. Montgomery Road, Suite D, Montgomery Field Airport in the City of San Diego, County of San Diego, State of California, and more particularly described in **Exhibit A: Premises**, attached hereto.
- 1.2 Uses. The Premises are leased to LESSEE solely for the purpose of the operation of an aviation related office space and such other related or incidental purposes approved by CITY ("LESSEE'S Business"), and for no other purpose whatsoever.
- 1.3 Unauthorized Use. LESSEE'S use of the Premises for any unauthorized purpose shall be a default of this Lease.
- 1.4 Continuous Use. LESSEE shall continuously use the Premises as permitted under this Lease throughout the term hereof.
- 1.5 No Nuisance. LESSEE shall not use the Premises in any manner which, in CITY'S opinion, creates a nuisance or disturbs persons, or unreasonably interferes with uses of property, at or in the vicinity of Montgomery Field Airport.
- 1.6 Related Council Actions. By entering into this Lease, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development or operation of the Premises. "Discretionary action" includes without limitation rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall diligently seek all entitlements and actions, from both CITY and other governmental agencies with jurisdiction over the Premises, as are necessary to develop and operate the uses contemplated by this Lease, all at no cost to CITY.
- 1.7 Quiet Possession. LESSEE, paying the rent and performing its obligations under this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If during the term of this Lease LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease

shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage.

1.8 Easements and Reservations.

1.08.1 CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.

1.08.2 CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

1.08.3 CITY may enter the Premises for the purpose of developing or making repairs to municipal resources and services.

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

- 1.9 Operation of Facilities. LESSEE shall establish a regular schedule of days and hours of operation to best serve the public. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable governmental rules and regulations.
- 1.10 Competent Management. Throughout the term of this Lease, LESSEE shall provide competent management of LESSEE'S Business to CITY'S satisfaction. "Competent management" shall mean demonstrated ability in the management and operation of an office and related activities in a fiscally responsible manner.
- 1.11 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
- 1.12 Cal/OSHA. LESSEE and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements of Title 8 of the California Code of Regulations, as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as "Cal/OSHA").
- 1.13 Political Activities. LESSEE shall not use the Premises for promoting or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan.

2. TERM

- 2.1 Term. The term of this Lease ("Term") shall be for three (3) years. The Effective Date shall be August 1, 2008.

2.2 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be deemed a renewal or extension of this Lease. LESSEE'S continued occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy terminable at will upon thirty (30) days prior written notice, and all other terms and conditions of this Lease shall continue in full force and effect. At any time during such holdover tenancy, and upon thirty (30) days prior written notice, CITY may increase the rent payable under this Lease to an amount up to one hundred twenty-five percent (125%) of the rent payable just prior to such holdover tenancy.

2.3 Surrender and Quitclaim.

2.03.1 Surrender of Premises. Upon 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 existing after the Effective Date and not the result of LESSEE'S use, occupancy, development, or maintenance of the Premises, and in a decent, safe, and sanitary condition.

2.03.2 Quitclaim Deed. Within five (5) days after written demand at any time after surrender of the Premises, LESSEE shall execute and deliver to CITY a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice shall be conclusive evidence of the termination of this Lease and all of LESSEE'S rights to the Premises.

3. RENT

3.1 Rent. The initial rent payable under this Lease shall be \$440.00 per month. At each yearly anniversary the rent shall be increased by 5%.

3.2 Time and Place of Payment. LESSEE shall pay rent monthly. LESSEE shall pay the Monthly Rent in advance on or before the first day of each month during the Term. If the Effective Date is not the first day of a calendar month, then the Minimum Monthly Rent payable for the partial month at the beginning of the Term shall be prorated on a per diem basis, and paid on or before the first day of the first full month of the Term. All rents payable under this Lease shall be paid to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

Or hand delivered to:

The Office of the City Treasurer

Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days prior written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If a postmark is illegible, payment shall be deemed made only upon actual receipt. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail. LESSEE shall clearly identify the Premises by location and include CITY'S customer account number for LESSEE on each rent payment to assure proper accounting of LESSEE'S payments.

3.3 Delinquent Rent.

3.03.1 Late-Payment Charges. Except as otherwise provided herein, if LESSEE fails to pay rent when due, LESSEE shall pay, in addition to the delinquent rent, a late-payment charge equal to five percent (5%) of the delinquent rent. If the rent is still unpaid after fifteen days past due, LESSEE shall pay an additional late-payment charge equal to ten percent (10%) of the delinquent rent [being a total of fifteen percent (15%)], which the parties agree to be appropriate to compensate CITY for loss resulting from payment delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

4. ASSIGNMENT & SUBLETTING

4.1 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or any right or appurtenant privilege to the Premises, or permit any other person, except LESSEE'S employees, agents, and guests, to use or occupy the Premises or any part of the Premises without CITY'S prior written consent. CITY'S consent to an assignment, subletting, occupation, or use by any other person shall not be deemed consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY'S consent shall be void and shall be a default of this Lease. Notwithstanding any provision of this Lease to the contrary, upon such default, CITY may terminate this Lease immediately upon written notice to LESSEE. Neither this Lease nor any interest in it shall be assignable, as to LESSEE'S interest, by operation of law, without CITY'S written consent. For the purposes of this section "assignment" shall include the transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders of LESSEE, as the case may be, from the original LESSEE.

4.01.1 Consent Conditions. CITY'S consent to any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing to assume the rights and obligations assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease applicable to the rights and obligations assumed. CITY may require, as a condition to consenting to any assignment or sublease, that this Lease be revised to comply with then-

current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.

4.01.2 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its sublessees and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. LESSEE'S failure to fully disclose all of the information required by Charter section 225, or LESSEE'S failure to require each of its sublessees and assignees to fully disclose such information, shall be a default of this Lease. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease as a sublessee or assignee must be reviewed and approved by CITY.

4.01.3 Additional Consideration to CITY. If this Lease is assigned, or if a majority of the leasehold is subleased, LESSEE shall pay to CITY an amount equal to ten percent (10%) of the gross amount paid for the leasehold in connection with an approved assignment, or ten percent (10%) of any amount paid to LESSEE in consideration of the sublease. The amount upon which the ten-percent payment shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee or sublessee as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrently with the completion of the proposed transaction. Any assignment or subletting in violation of this Lease shall be void and shall be a default of this Lease. Notwithstanding any provision of this Lease to the contrary, upon such default, CITY may terminate this Lease immediately upon written notice to LESSEE. The two-percent payment required by this subsection shall not apply to:

- a) An assignment or transfer of a beneficial interest in the leasehold resulting from assignment, devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants of LESSEE, if an individual, or if LESSEE is other than an individual, LESSEE'S majority owner or an affiliate of LESSEE; or
- b) An assignment deemed by CITY, in its reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE'S legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

4.2 Encumbrance. Subject to CITY'S prior written consent, LESSEE may encumber this Lease, and LESSEE'S leasehold estate by deed of trust, mortgage, chattel mortgage,

or other security instrument to assure the payment of LESSEE'S promissory note(s), upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of improving, repairing, or maintaining the Premises. Each such encumbrance shall be subject to all of the terms, covenants, and conditions of this Lease, and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof.

5. DEFAULT AND REMEDIES

5.1 Default and Remedies. Upon default by LESSEE, CITY may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY at law or in equity. Such remedies shall be cumulative and not exclusive.

5.01.1 Default. Each of the following shall constitute a default of this Lease:

- a) LESSEE'S failure to make any payment required under this Lease when due, if the failure continues for ten (10) days following written notice of the failure by CITY; or
- b) LESSEE'S breach of any of its obligations under this Lease, other than those requiring payment to CITY, and LESSEE either: (i) fails to cure the breach within thirty (30) days following written notice from CITY; or (ii) if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion within a reasonable time; or
- c) LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
- d) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing; or
- e) LESSEE is adjudicated a bankrupt; or
- f) LESSEE makes a general assignment for the benefit of creditors.

5.01.2 Remedies.

- a) Default For Nonpayment. Upon a default by LESSEE for nonpayment, CITY may, at its option, give LESSEE, or any person claiming right through LESSEE, a written "Three-Day Notice to Pay or Quit," or CITY may terminate the Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises, and may recover the amount set forth below.

- b) Default Other Than For Nonpayment. Upon a default by LESSEE for other than nonpayment, CITY may, at its option, terminate this Lease and all right of LESSEE and of all persons claiming right through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises, and may recover from LESSEE the amount set forth below. If any such is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion within a reasonable time.

5.01.3 CITY'S Recovery. Upon termination of the Lease upon a default, CITY may recover the sum of:

- a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE'S breach and default, or that in the ordinary course of things, would be likely to result; and
- e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

- 5.01.4 Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE'S default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion within a reasonable time. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or

beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise all of the following options:

- a) CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY'S notice of such costs to LESSEE, and mortgagee or beneficiary;
- b) CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and the 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 or to pay the costs of correction performed by or at the direction of CITY; and
- c) 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 shall assume and pay any and all penalties or bonuses required by the beneficiary, trustee or mortgagee as a condition of early payoff of the related obligation by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is not curable by LESSEE, then any lender holding a beneficial interest in the Premises, 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 the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the 30-day period after receiving CITY'S written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY 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 the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

5.01.5 Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.

5.01.6 Waiver. CITY'S failure to insist upon the strict performance of any of LESSEE'S obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by

CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Lease. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment. The property constituting the Premises is publicly-owned and held in trust for the benefit of the CITY'S citizens. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

6. EMINENT DOMAIN

If all or part of the Premises is 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 shall be as follows:

- 6.1 Full Taking. If 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.
- 6.2 Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the reasonable 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.
- 6.3 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE'S operations are reduced or impaired.
- 6.4 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. 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, or any damages to LESSEE'S landscaping, parking, signage, or the removal or relocation of same. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 6.5 Transfer. CITY may 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 under this Lease.

6.6 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.

7. INDEMNITY; INSURANCE

7.1 Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation injury to LESSEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE'S occupancy, use, development, or maintenance of the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; 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 CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

7.2 Insurance. Upon execution and delivery of this Lease, LESSEE shall deliver to CITY a current certificate of insurance for:

- a) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000); and
- b) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, with Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000).

7.02.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

7.02.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.

- 7.02.3 Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 7.02.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.02.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease.
- 7.02.6 Modification. To assure protection from and against the kind and extent of risk existing on the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to LESSEE'S use of the Premises.
- 7.02.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 7.02.8 Failure to Comply. Notwithstanding any other provision of this Lease to the contrary, if LESSEE fails or refuses to obtain or maintain insurance as required by this Lease, or fails to provide proof of insurance, CITY may terminate this Lease immediately upon such breach.
- 7.02.9 All-Risk Property Insurance. LESSEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.
- 7.3 Waste, Damage or Destruction. LESSEE shall keep the Premises clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE shall clear and

remove from the Premises all debris resulting from the 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 the damage. LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days of the occurrence of the fire or damage, and shall complete the required repairs, restoration, or replacement of the Premises within a reasonable time.

8. IMPROVEMENTS/ALTERATIONS/REPAIRS

- 8.1 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 as to the condition of the Premises. LESSEE shall rely solely on its independent inspections, tests, investigations, and observations in entering into this Lease, including without limitation LESSEE'S own investigation regarding the presence of any hazardous substances on the Premises. LESSEE acknowledges that the Premises are in satisfactory condition and accepts the Premises in the condition existing on the Effective Date. LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises. Upon execution of this Lease, LESSEE shall deliver to CITY true and complete copies of all reports and other documents prepared by or for LESSEE concerning the physical condition of the Premises. If LESSEE fails to investigate the Premises for the presence of any hazardous substances, or fails to notify CITY of the presence of hazardous substances after its investigation, LESSEE shall be deemed to have waived any and all claims against CITY resulting from the presence of hazardous substances on the Premises.
- 8.2 Entry and Inspection. Upon reasonable notice, CITY may at all times enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If CITY'S entry or inspection discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, after ten (10) days prior written notice to LESSEE, have any necessary maintenance work done at LESSEE'S sole expense, and LESSEE shall pay promptly any and all costs incurred by CITY in having the necessary maintenance work done to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the 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. The bond shall be in an amount adequate, in CITY'S opinion, to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall neither create nor increase any obligation of CITY'S under this Lease.
- 8.3 Maintenance. LESSEE shall, at its sole cost and expense, pay all costs of operating and maintaining the Premises throughout the Term. LESSEE shall, at its sole cost and expense, 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 all applicable laws. LESSEE shall comply with all applicable codes

and standards of CITY, state, and federal agencies applicable to all maintenance, repairs, and replacements on the Premises.

- 8.4 Improvements and Alterations. LESSEE shall not construct any improvement, structure, or installation on the Premises, or make any alteration to the Premises without CITY'S prior written approval. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY'S prior written approval. LESSEE shall not install or permit the installation of any additional underground tanks on the Premises.
- 8.5 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be necessary or reasonably advisable to validate its use of the Premises, relative to any such superior interest. If LESSEE'S use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 8.6 Projects. LESSEE shall notify CITY of all improvement projects on the Premises and shall inform permitting authorities that the Premises are CITY-owned property.
- 8.7 Repair and Restoration. These provisions shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy and sanitary condition, including without limitation structural repair and restoration of damaged or worn improvements.
- 8.8 Liens. LESSEE shall at all times hold 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 claims, including reasonable attorney 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 the 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.
- 8.9 Taxes. LESSEE shall 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 Premises, including without limitation any licenses or permits. LESSEE acknowledges 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 the leasehold interest. LESSEE shall pay all possessory interest taxes. LESSEE'S payment of taxes, fees and assessments shall not reduce any rent due CITY.

- 8.10 Signs. LESSEE shall only post signs required by federal, state or local regulations, including without limitation safety signs required by OSHA, FAA or FCC. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises without CITY'S prior written consent. If any unauthorized item is found on the Premises, LESSEE shall remove the item at its expense upon twenty-four (24) hours notice by CITY, or CITY may then enter the Premises and remove the item at LESSEE'S cost. LESSEE shall post a clearly marked and observable sign on the Premises indicating LESSEE'S name and emergency telephone number.
- 8.11 Ownership of Improvements and Personal Property. LESSEE acknowledges and agrees that any and all improvements, trade fixtures, structures, and installations on the Premises on the Effective Date are and shall remain CITY'S property. Any and all improvements, trade fixtures, structures, and installations or additions constructed on the Premises by LESSEE during the Term ("LESSEE'S Additions") shall at the expiration or earlier termination of this Lease be deemed, at CITY'S option, to be part of the Premises and shall become CITY'S property free and clear of all liens and claims.
- 8.011.1 If CITY elects not to assume ownership of LESSEE'S Additions, CITY shall notify LESSEE either upon termination of this Lease or at least ninety (90) days prior to the expiration of this Lease, and LESSEE shall remove LESSEE'S Additions at LESSEE'S sole cost and expense and as directed by CITY. If LESSEE fails to remove LESSEE'S Additions as directed, LESSEE shall pay CITY the full cost of their removal.
- 8.011.2 LESSEE shall remove LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or earlier termination of this Lease. Any items which LESSEE fails to remove shall be considered abandoned and become CITY'S property free and clear of all claims and liens, or CITY may, at its option, remove the items at LESSEE'S sole cost and expense.
- 8.011.3 If LESSEE'S removal of LESSEE'S Additions or any of its personal property results in damage to the remaining improvements on the Premises, LESSEE shall repair all such damage at LESSEE'S sole cost and expense.
- 8.011.4 If the removal of any of LESSEE'S Additions or LESSEE'S personal property by either CITY or LESSEE takes place after the expiration or earlier termination of this Lease, LESSEE shall pay rent to CITY at the rate in effect immediately prior to such expiration or earlier termination until all of LESSEE'S property has been removed from the Premises.
- 8.011.5 If LESSEE desires to dispose of LESSEE'S Additions or any of its personal property used in the operation of the Premises upon the expiration or earlier termination of this Lease, then CITY shall have the first right to acquire or purchase such property.

9. HAZARDOUS SUBSTANCES

9.1 Hazardous Substances. LESSEE shall not allow the installation or release of hazardous substances in, on, under, or from the Premises. LESSEE and LESSEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Premises without CITY'S prior written consent. 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. As used in this Lease, "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 of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease. Notwithstanding the foregoing, LESSEE may store, utilize, and sell motor oil and other automotive lubricants and similar automotive products in the normal course of LESSEE'S Business in accordance with industry standards and in compliance with all applicable laws.

9.01.1 Remediation. If LESSEE'S occupancy, use, development or maintenance of the Premises results in a release of a hazardous substance, LESSEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.

9.01.2 Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S occupancy, use, development, or maintenance of the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

9.01.3 Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Premises, LESSEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. 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 take all actions necessary to alleviate the danger. LESSEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Premises.

9.01.4 Environmental Assessment. Upon reasonable cause to believe that LESSEE'S occupancy, use, development, or maintenance of the Premises ("LESSEE'S Operations"), resulted in any hazardous substance being released on or beneath the Premises, CITY may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE'S Operations on,

in, or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such 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, or if LESSEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and LESSEE shall pay all costs and expenses therefor.

- 9.2 Asbestos Disclosure. Portions of the Premises may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose to the appropriate parties the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
- 9.3 Asbestos. If either CITY or LESSEE makes improvements, alterations, or repairs to the Premises, the party causing such improvements, alterations, or repairs shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations, or repairs to the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE'S obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration, or repair, and, except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.

10. AIRPORTS PROVISIONS

- 10.1 LESSEE'S Contracts. LESSEE shall insert the following provisions of this section, titled "LESSEE'S Contracts," into each of its contracts that grants any right or privilege to any person or legal entity to provide services or accommodations to the public on the Premises, and LESSEE shall require each of them to do the same.
- 10.01.1 FAA Nondiscrimination Covenant. LESSEE shall comply with all 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 it now exists or may be amended in the future (the "FAA Nondiscrimination Covenant"). LESSEE shall not:

- a) Discriminate against any person, or deny any person the benefits of, or participation in, the use of facilities on the Premises based on race, color, sex or national origin; or
- b) Discriminate against any person, or deny any person the benefits of, or participation in, the construction of improvements to the Premises, or the furnishing of any services on the Premises, based on race, color, sex, or national origin.

10.01.2 Termination upon Breach of FAA Regulations. Notwithstanding any provision of this Lease to the contrary, if LESSEE breaches the FAA Nondiscrimination Covenant, and all procedures of the FAA Nondiscrimination Covenant are allowed and completed, including the expiration of appeal rights, then CITY may terminate this Lease immediately upon notice to LESSEE.

10.01.3 Fair and Equal Practices. LESSEE shall furnish accommodations and services on a fair and equal basis to all users of the Premises, and shall charge fair, reasonable and equal prices for each item or service. LESSEE may make reasonable and nondiscriminatory discounts, rebates, or similar price reductions to volume purchasers. Notwithstanding any provision of this Lease to the contrary, if LESSEE breaches its obligations under this section, CITY may terminate this Lease immediately upon notice to LESSEE, or either CITY or the United States of America may judicially enforce the obligation.

10.01.4 Equal Opportunity. LESSEE 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.

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

10.2 License to Use Public Airport Facilities. CITY grants to LESSEE a nonexclusive license ("Airport License") to use all public airport facilities at Montgomery Field Airport, including without limitation taxiways, runways, aprons, navigational aids and other facilities related to the normal function of aircraft under LESSEE'S control. LESSEE shall comply with all current and future federal, state and local laws, rules and regulations relating to such use. Upon reasonable cause to believe LESSEE has failed to comply with any such law, rule, or regulation, CITY may suspend or terminate the Airport License at will at any time upon notice to LESSEE. The Airport License shall terminate upon the expiration or earlier termination of this Lease.

10.3 LESSEE Use to Conform with Federal Aviation Regulations. LESSEE shall comply with all applicable federal, state, and local aviation regulations applicable to LESSEE'S occupancy, use, development, maintenance, and restoration of the Premises. LESSEE

shall 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 improvement or modifying or altering any structure on the Premises.

- 10.4 LESSEE'S Noninterference. LESSEE shall not act or refrain from acting in any way that interferes with any aircraft landing or taking off at Montgomery Field Airport, or would otherwise create a hazard to airport traffic.
- 10.5 Lease Subordinate to CITY-United States Agreements. This Lease shall be subordinate to the terms and conditions of all existing and future agreements and grant assurances between CITY and the United States of America.
- 10.6 Height Limitation. LESSEE shall not erect or permit any structure or vegetation on the Premises to reach a height above the height limitation set by the Federal Aviation Administration and applicable to the Premises.
- 10.7 Right of Flight Easement. CITY reserves to itself, its successors and assigns, and for the benefit and use of the public, the air space above the Premises for the flight and passage of aircraft.
- 10.8 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 rights, existing now or in the future, affecting the control, operation, regulation, take over, exclusive or nonexclusive use of Montgomery Field Airport.
- 10.9 Airport Development. CITY reserves to itself, its successors and assigns, and for the benefit and use of the public, the right, without obligation, to further develop, alter, and improve Montgomery Field Airport and its routes and landing areas as CITY deems appropriate, in its sole discretion. LESSEE shall not interfere with CITY'S exercise of such rights.
- 10.10 Nonexclusive Right. LESSEE acknowledges and agrees that nothing in this Lease shall be deemed to grant any exclusive right under federal law, including any exclusive rights within the meaning of Section 308 of the Federal Aviation Act of 1958, .
- 10.11 Airport Facilities Maintenance. CITY reserves to itself, its successors and assigns, and for the benefit and use of the public, the right, without obligation, to maintain and repair the airport landing area and all other public airport facilities. LESSEE shall not commence any maintenance or repair of any public airport facilities at Montgomery Field Airport without CITY'S prior written consent.
- 10.12 CITY to Mitigate Impact of Subordination. If a subordination agreement between CITY and the United States of America results in LESSEE'S inability to use the Premises as permitted under this Lease, or if LESSEE'S use of the Premises as permitted hereunder is materially diminished during the period of such subordination, CITY shall reduce the rent payable under this Lease in an amount determined by CITY, in its sole discretion, to reasonably compensate LESSEE for such loss, which LESSEE agrees shall be sufficient to compensate LESSEE for loss resulting from such diminished use of the Premises, including lost interest, opportunities, and legal costs.

- 10.13 Licenses and Certifications. LESSEE shall obtain and maintain all required local, state, and federal licenses and permits, including without limitation FAA licenses and approvals, required for LESSEE'S occupancy, use, development, maintenance, repair, and restoration of the Premises.
- 10.14 Employee Conduct. LESSEE shall be responsible for the conduct of its employees in the course and scope of their employment, while on the Montgomery Field Airport property.
- 10.15 Termination for Development. If LESSEE'S use of the Premises becomes inconsistent or incompatible, in CITY'S sole discretion, with the development, expansion, or operation of the airport, CITY may terminate this Lease upon one (1) year prior written notice to LESSEE.

11. CITY POLICY PROVISIONS

- 11.1 Nondiscrimination. LESSEE shall not 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.
- 11.2 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE shall comply with City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Lease. LESSEE, its sublessees and all of its subcontractors are individually responsible to abide by its contents. 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 hereafter enacted. LESSEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law. On or before the Commencement Date, LESSEE shall submit a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities. LESSEE and its sublessees shall insert the foregoing provisions in all contracts and subcontracts for any work covered by this Lease so that the provisions will be binding upon each contractor and subcontractor. Compliance with EEO provisions will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff. notwithstanding any provision of this Lease to the contrary, LESSEE'S failure to comply with the requirements of this section and/or submitting false information in response to these requirements shall be a default, upon which CITY may immediately terminate this Lease, and may bar LESSEE from participating in CITY leases and/or contracts for a period of not less than one (1) year.

11.3 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY leases and contracts. LESSEE shall, to the extent legally possible, solicit applications for employment, and bids and proposals for contracts and subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE shall hire qualified local residents and firms whenever feasible.

11.4 CITY Employee Participation Policy. This Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if LESSEE employs an individual who, within the twelve months immediately preceding the 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 LESSEE. These provisions do not apply to members of the City Council.

11.5 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:

11.05.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

11.05.2 Establish a drug-free awareness program to inform employees about all of the following:

- a) The dangers of drug abuse in the workplace;
- a) LESSEE'S policy of maintaining a drug-free workplace;
- a) Any available drug counseling, rehabilitation, and employees assistance programs; and
- a) The penalties that may be imposed upon employees for drug abuse violations.

LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

11.6 Disabled Access Compliance. LESSEE shall at all times in the occupancy, use, development, and maintenance of the Premises and the Sites comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

- 11.7 Water Quality Assurances. LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control ("Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first ninety (90) days of the Term, LESSEE shall submit a Prevention Plan satisfactory to the City Manager that will control erosion and reduce the amount of "Pollutants," as defined by the Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within ninety (90) days of written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY'S satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall be solely responsible for informing its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and assuring their compliance therewith.

12. GENERAL PROVISIONS

- 12.1 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. LESSEE shall comply with all notices issued by CITY under the authority of all current or future laws, statutes, ordinances, or regulations.
- 12.2 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid, or reliable overnight courier, addressed to the parties as follows:

If to LESSEE:

DANIELS AVIATION INC.
Attn.: Travis Daniels
3750 John J. Montgomery Drive, Suite D
San Diego, CA. 92123

If to CITY:

THE CITY OF SAN DIEGO
Attention: Airports Deputy Director
3750 John J. Montgomery Dr.
San Diego, CA 92123

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

Or to any mortgagee, trustee, or beneficiary, as applicable, at the appropriate address designated in writing by that party. 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. Notice shall be effective upon personal service or five (5) days after deposit with the United States Postal Service.

- 12.3 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 shall remain in full force and effect.
- 12.4 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 the act, the obligated party shall be excused from performing that act for the period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent under this Lease. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.
- 12.5 Legal Fees. If there is any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including without limitation court costs and attorney fees.
- 12.6 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.
- 12.7 Captions. The 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. The lack of consecutive numbers shall have no effect on the enforceability of this Lease.
- 12.8 Entire Understanding. This Lease contains the entire understanding of the parties. CITY and LESSEE, by signing this Lease, agree that there is no other written or oral understanding between them with respect to the 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 party to 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 such actions.
- 12.9 Lease Modifications. This Lease shall not be modified, altered or amended unless the modification, alteration or amendment is in writing and signed by all parties to this Lease.

- 12.10 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this Lease. Except as otherwise provided in this Lease, 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.
- 12.11 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.
- 12.12 Cost Recovery. CITY maintains a schedule of fees to be paid by LESSEE as an offset to administrative costs incurred for CITY staff services that are of benefit to LESSEE. CITY shall process service requests upon receipt of LESSEE'S payment of the applicable fee. The fee schedule, which is maintained by the City Clerk's Office, may be updated from time to time at CITY'S sole discretion.
- 12.13 Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 12.14 Counterparts. This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 12.15 Consents, Approvals. Neither CITY nor LESSEE may unreasonably withhold or unreasonably delay any consent or approval required by this Lease.
- 12.16 CITY'S Consent, Discretion. Whenever required under this Lease, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

12.17 Authority. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date:

Date: 7/16/08

DANIELS AVIATION INC., a California corporation

BY: [Signature]

Name: Travis N. Daniels

Title: President

Date: 21 July 2008

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]

Name: M.C. TUSSEY

Title: Deputy Director, Airports

APPROVED AS TO FORM AND LEGALITY:

Date: 7/28/08

MICHAEL J. AGUIRRE, City Attorney

BY: [Signature]

Name: John H. Serrano

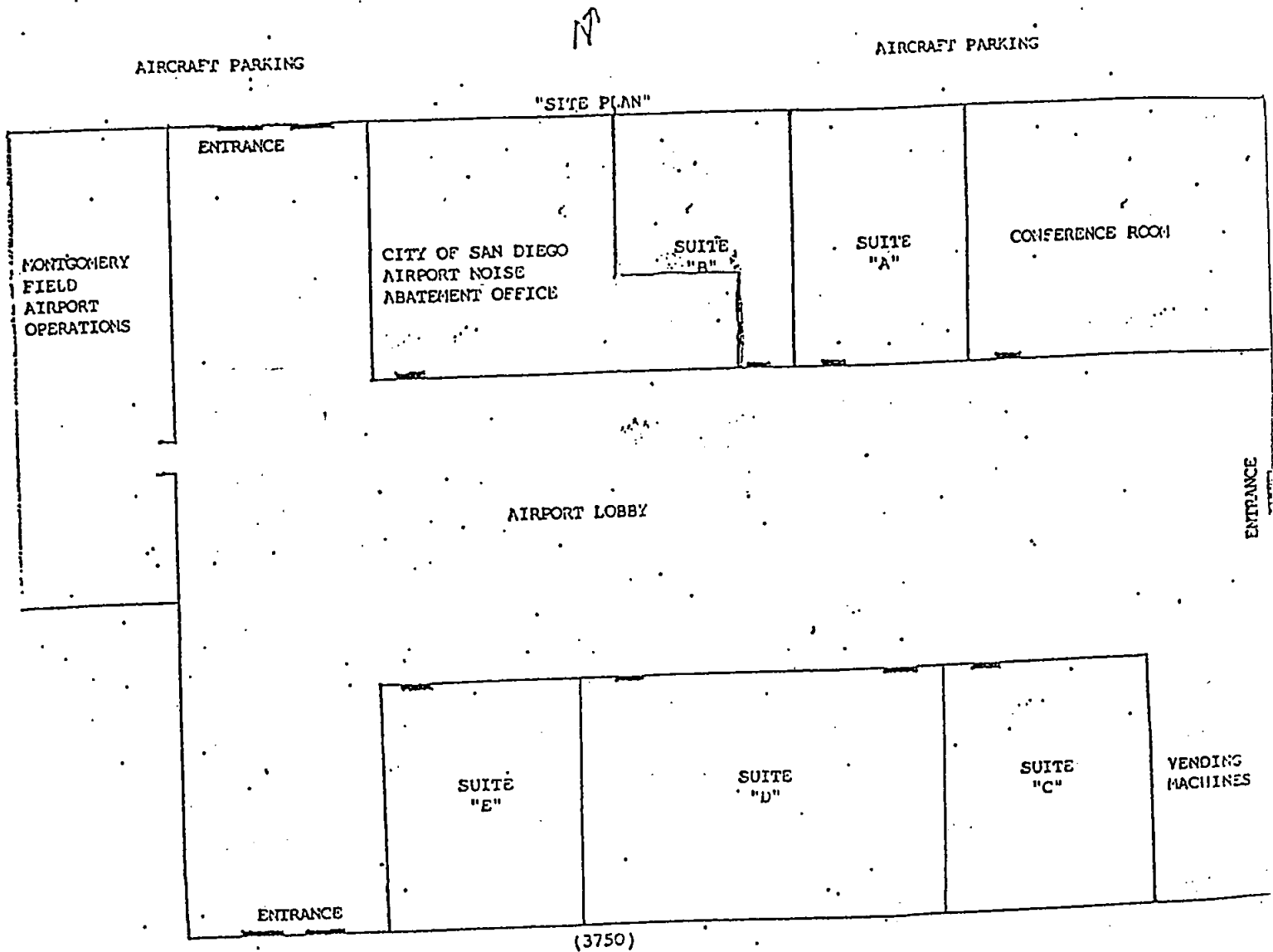
Title: Deputy City Attorney

Exhibit A: Premises

Exhibit "A" - Description of Premises.

Leased Premises:

Suite "D"



JOHN J. MONTGOMERY DRIVE

EXHIBIT B

RULES AND REGULATIONS

The sidewalks, entrances, halls, corridors and stairways of the Building and Premises shall not be obstructed or used as a waiting or lounging place by any lessee, their agents, servants, employees, invitees, licensees and visitors. All entrance doors leading from any Premises to the hallways are to be kept closed at all times.

1. CITY reserves the right to refuse admittance to the Building between the hours of 10:00 p.m. and 6:00 a.m., Monday through Sunday. In case of invasion, riot, public excitement or other commotion, CITY also reserves the right to prevent access to the Building during the continuance of same. CITY shall in no case be liable for damages for the admission or exclusion of any person to or from the Building. CITY reserves the right to exclude or expel from the Building any person who, in CITY's judgement, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building.
2. CITY will furnish each LESSEE with keys to each door lock on the Premises, and CITY may make a reasonable charge for any additional keys requested by any LESSEE. No LESSEE shall have any keys made for the Premises; nor shall any LESSEE alter any lock, or install new or additional locks or bolts, on any door without the prior express written approval of CITY. In the event of such alteration or installation approved by CITY, the LESSEE making such alteration shall supply CITY with a key for any such lock or bolt. Each LESSEE, upon the expiration or termination of its tenancy, shall deliver to CITY all keys and access cards in any such LESSEE's possession for all locks and bolts in the Building and in the event of loss of any keys or cards so furnished, shall pay CITY therefor. If all keys are not returned to CITY at the office of the Building Manager upon Lease expiration, then the amount to replace the keys will be deducted from the Security Deposit.
3. In order that the Building may be kept in a state of cleanliness, each LESSEE shall during the term of each respective Lease, permit CITY's employees (or CITY's agent's employees) to take care of and clean the Premises and LESSEE shall not employ any person(s) other than CITY's employees (or CITY's agent's employees) for such purpose. LESSEE shall not cause any unnecessary labor by reason of such LESSEE's carelessness or indifference in the preservation of good order and cleanliness of the Premises. In the event LESSEE must dispose of crates, boxes, etc. which will not fit into office waste paper baskets, it will be the responsibility of LESSEE to dispose of same. In no event shall LESSEE set such items in the public hallways or other areas of the building or garage facility, excepting LESSEE's own Premises, for disposal. LESSEE shall store all of its trash and garbage within its Premises or in any other facilities provided by CITY.

All garbage and refuse disposal shall be made in accordance with directions issued from time to time by CITY.

4. CITY reserves the right to prescribe the date, time, method and conditions that any personal property, equipment, trade fixtures, merchandise and other similar items shall be delivered to or removed from the Building. No iron safe or other heavy or bulky object shall be delivered to or removed from the Building, except by experienced safe men, movers or riggers approved in writing in advance by CITY. All damage done to the Building by the delivery or removal of such items, or by reason of their presence in the Building, shall be paid to CITY, immediately upon demand, by the LESSEE by, through, or under whom such damage was done. There shall not be used in any space, or in the public halls of the Building, either by LESSEE or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires. LESSEE's initial move-in and subsequent deliveries of bulky items, such as furniture, safes and similar items shall, unless otherwise agreed in writing by CITY, be made during the hours of 5:30 p.m. to 7:00 a.m. or on Saturday or Sunday. Deliveries during normal office hours shall be limited to normal office supplies and other small items. No delivery shall be made which impede or interfere with other LESSEES or the operations of the Building.
5. The walls, partitions, skylights, windows, doors and transoms that reflect or admit light into passageways or into any other part of the Building shall not be covered or obstructed by LESSEE.
6. The toilet rooms, toilets, urinals, wash bowls and water apparatus shall not be used for any purpose other than for those for which they were constructed or installed, and no sweepings, rubbish, chemicals, or other unsuitable substances shall be thrown or placed therein. The expense of any breakage, stoppage or damage resulting from violation(s) of this rule shall be borne by the LESSEE by whom, or by whose agents, employees, invitees, licensees or visitors, such breakage, stoppage or damage shall have been caused.
7. No sign, name, placard, advertisement or notice visible from the exterior of any Premises, shall be inscribed, painted or affixed by any LESSEE on any part of the Building without the prior written approval of CITY.
8. No signaling, telegraphic or telephonic instruments or devices, burglar alarm systems or similar service, or other wire, instruments or devices, shall be installed in connection with the Leased premises without the prior written approval of CITY. Such installations, and the boring or cutting for wires, shall be made at the sole cost and expense of the LESSEE and under the control and direction of CITY. CITY retains, in all cases, the right to require (i) the installation and use of such electrical protecting devices that prevent the transmission of excessive currents of electricity into or through the Building; (ii) the changing of wires and of their installation and arrangement underground or otherwise as

CITY may direct; and (iii) compliance on the part of all using or seeking access to such wires with such rules as CITY may establish relating thereto. All such wires used by LESSEE must be clearly tagged at the distribution boards and junction boxes and elsewhere in the Building, with (i) the number of the Premises to which said wires lead; (ii) the purpose for which said wires are used; and (iii) the name of the company operating same.

9. LESSEE, its agents, servants or employees, shall not (i) go on the roof of the Building; (ii) use any additional method of heating or air conditioning the Premises; (iii) sweep or throw any dirt or other substance from the Premises into any of the halls, corridors, elevators, or stairways of the Building; (iv) bring in or keep in or about the Premises any vehicles or animals of any kind; (v) install any radio or television antennae or any other device or item on the roof, exterior walls, windows or window sills of the Building; (vi) place objects against glass partitions, doors or windows which would be unsightly from the interior or exterior of the Building; (vii) use the Premises for any manufacturing, storage or sale of merchandise or property of any kind; (viii) cause or permit unusual or objectionable odor to be produced or permeate from the Premises, including, without limitation, duplicating or printing equipment fumes; or (ix) install or operate any vending machines in the Premises without the prior written consent of CITY. LESSEE, its agents, servants and employees, invitees, licensees, or visitors shall not permit the operation of any musical or sound producing instruments or device which may be heard outside the Leased premises, building, or which may emit electrical waves which will impair radio or television broadcast or reception from or into the building.
10. LESSEE shall not store or use in any Premises any (i) ether, naphtha, phosphorous, benzol, gasoline, benzine, petroleum, crude or refined earth or coal oils, flashlight power, kerosene or camphene; (ii) any other flammable, combustible, explosive or illuminating fluid, gas or material of any kind; or (iii) any other fluid, gas or material of any kind having an offensive odor, without the prior written consent of CITY.
11. No canvassing, soliciting, distribution of hand bills or other written material, or peddling shall be permitted in the Building, and LESSEE shall cooperate with CITY in presentation and elimination of same.
12. LESSEE shall give CITY prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electrical facilities or any part or appurtenances of the Premises.
13. If any Premises become infested with vermin, the LESSEE, at its sole cost and expense, shall cause its premises to be exterminated from time to time to the satisfaction of the CITY and shall employ such exterminators as shall be approved by CITY.

14. No curtains, blinds, shades, screens, awnings or other coverings or projections of any nature shall be attached to or hung in, or used in connection with any door, window or wall of a leased premises of the Building without the prior written consent of CITY.
15. LESSEE shall not place a load upon any floor of the Leased premises which exceeds the load per square foot which such floor was designated to carry and which is allowed by law. CITY shall have right to prescribe weight, size and position of all equipment, materials, furniture or other property brought into the building. Heavy objects shall, if considered necessary by CITY, stand on such platform as determined by CITY to be necessary to properly distribute the weight, which platform shall be provided at LESSEE's expense. Business machines and mechanical equipment belonging to LESSEE, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to CITY or to any LESSEE in the Building, shall be placed and maintained by LESSEE, at LESSEE's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. CITY will not be responsible for loss of, or damage to, any such equipment or other property for any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of LESSEE.
16. LESSEE shall not waste electricity, water or air conditioning and agrees to cooperate with CITY to assure the most effective operation of the building's heat and air conditioning and to comply with the governmental energy saving rules, laws or regulations of which LESSEE has actual notice, and shall refrain from attempting to adjust controls. LESSEE shall keep corridors closed, shall keep window coverings closed at the end of each business day.
17. CITY shall have the right to prohibit any advertising by LESSEE which, in CITY's opinion, tends to impair the reputation of CITY or of the Building, or its desirability as an office building for existing or prospective LESSEE who require the highest standards of integrity and respectability, and upon written notice from CITY, LESSEE shall immediately refrain from or discontinue such advertising.
18. Whenever the word "LESSEE" occurs, it is understood and agreed that it shall also mean LESSEE's associates, employees, agents and any other person entering the building or the Leased premises under the express or implied invitation of LESSEE. LESSEE shall cooperate with CITY to assure compliance by all such parties with the Rules and Regulations.
19. CITY reserves the right to make reasonable amendments, modifications and additions to the Rules and Regulations heretofore set forth, and to make additional reasonable rules and regulations, as in CITY's sole judgement may from time to time be needed for the safety, care, cleanliness and preservation or good order of the Building.

20. A request by LESSEE will be attended to only upon application at the office of the Building. Employees of CITY shall not perform any work or do anything outside of their regular duties unless under special instructions from CITY, and no employee will admit any person (LESSEE or otherwise) to any leased premises without specific instructions from CITY.
21. CITY shall have the right, exercisable without notice and without liability to LESSEE, to change the name and the street address of the Building of which a leased premises are a part. CITY will pay for all reasonable cost incurred by LESSEE as a result of changing the street address of the Building unless the change is requested by an authorized governmental agency.
22. LESSEE shall not obtain for use upon the Premises ice, towel or other similar services or accept barbering or bootblacking services on the Premises, except from persons authorized by CITY and at the hours and under regulations fixed by CITY.
23. CITY may waive any one or more of these Rules and Regulations for the benefit of any LESSEE, but no such waiver by CITY shall be construed as a waiver of such Rules and Regulations in favor of LESSEE or any other LESSEE nor prevent CITY from thereafter enforcing any such Rules and Regulations against any or all of the LESSEE of the Building.
24. LESSEE assumes any and all responsibility for protecting its Leased premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Leased premises secured. LESSEE shall comply with all safety and fire protection evacuation procedures and regulations established by CITY or any governmental agency.
25. LESSEE is required to accommodate, meet, and confer with any of their disabled patrons and visitors in the common area conference rooms available to all LESSEES on the first floor of the Building, subject to prior reservations.