



THE CITY OF SAN DIEGO

Lease Agreement

Between

THE CITY OF SAN DIEGO

And

AIR TOURS OF SAN DIEGO, LLC

CITY OF SAN DIEGO FLAT RATE LEASE

THIS LEASE AGREEMENT (lease) is executed between THE CITY OF SAN DIEGO, a California municipal corporation, hereinafter called "CITY," and Air Tours of San Diego, LLC, dba San Diego Air Tours, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY one office, referred to as Suite D, located in the Montgomery Field Airport Terminal Building at 3750 John J. Montgomery Road, situated in the City of San Diego, County of San Diego, State of California, 92123. Suite D is comprised of approximately one hundred and ninety square feet (190SF) of office space, as it is further depicted in **Exhibit A**, attached hereto and by this reference made part of this lease. Suite D is hereinafter called the "premises" or "leased premises." In addition to the exclusive use of the premises, LESSEE will also have the non-exclusive use of the transient ramp for the pick-up and drop-off of its customers, and the non-exclusive use of the common areas within the Terminal Building.

1.2 Uses.

The premises is leased to LESSEE solely for office purposes related to the operation of an air tour business and for no other purpose whatsoever.

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

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

LESSEE covenants and agrees to abide by the "Terminal Building's Rules and Regulations", which may be revised from time to time by CITY at its sole discretion, a copy of which is made a part of this lease as **Exhibit B**. Said Rules and Regulations are incorporated into this lease by this reference.

1.3 Related Council Actions.

By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard

to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the Term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the Term, or if during the lease Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting there from, but there shall be determined and stated in writing by the Mayor of CITY a proportionate reduction of the 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.

Notwithstanding the foregoing:

- (a) CITY reserves the right to change, alter or modify the office configuration of the airport Terminal Building in which the premises is located and to temporarily relocate LESSEE during any such change, alteration or modification.
- (b) Should CITY need to temporarily relocate LESSEE, CITY will relocate LESSEE within the same airport Terminal Building, and CITY agrees to reimburse LESSEE for any reasonable and substantiated costs – not to exceed \$250.00 – incurred by LESSEE as a result of such temporary relocation.
- (c) Should any such change, alteration or modification result in a permanent change to the size of the premises leased to LESSEE, and said change in size results in a fifteen percent (15%) or greater increase or decrease to the original size of the premises leased to LESSEE, then CITY shall proportionately increase or decrease the then-existing rental rate for the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased

premises for utilities, thoroughfares, or access as it deems advisable for the public good.

- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

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

1.6 Competent Management.

Throughout the Term of this lease, LESSEE shall provide competent management of the leased premises to the satisfaction of the Mayor or his designee. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an office for an aviation-related services business in a fiscally responsible manner.

1.7 Political Activities.

The leased premises shall be used exclusively for the purpose specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

SECTION 2: TERM

2.1 Commencement.

The term of this lease shall be for three (3) years ("Term"), commencing on October 1, 2015 ("Commencement Date").

2.2 Surrender of Premises.

At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

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

SECTION 3: RENT

3.1 Time and Place of Payment.

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:

City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

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.

3.2 Rent.

- a. Rent Amount. The total initial monthly flat- rate rent is five hundred nine dollars and thirty six cents (\$509.36) per month. Said rent is subject to annual adjustments as described below.
- b. Each year, on the anniversary of the Commencement Date, the monthly rent shall be increased by three percent (3%). The following is the schedule of the rent increases:

October 1, 2016:	\$524.64 per month
October 1, 2017:	\$540.38 per month

3.3 Delinquent Rent.

If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25). In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

3.4 Security Deposit.

A security deposit shall be paid to the CITY by LESSEE in the sum of five hundred dollars (\$500.00) on or before the Commencement Date of this lease. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE's successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE's failure to faithfully perform all terms, covenants, and conditions of this lease.

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

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

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

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

The security deposit or any balance thereof will be returned to LESSEE within the time periods proscribed by law following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants, and conditions hereof.

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

SECTION 4: ASSIGNMENT & ENCUMBRANCES

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. Any such assignment or subletting 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 Mayor, or his designee.

4.1 Encumbrance.

LESSEE may not 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.

SECTION 5: DEFAULTS AND REMEDIES

a. Default. In the event that:

- (1)** LESSEE shall default in the payment of rent required by this lease, and shall fail to cure said default with three (3) days following written notice thereof from CITY; or
- (2)** Other than the payment of rent, LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30)

days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or

- (3) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE shall be adjudicated a bankrupt; or
- (5) LESSEE shall make a general assignment for the benefit of creditors;

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

- b. 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.
- c. 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 Mayor 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 CITY to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the Mayor to take action or

require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

SECTION 6: EMINENT DOMAIN

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

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

eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 7: INDEMNIFICATION & INSURANCE

7.1 Indemnity.

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

7.2 Insurance.

LESSEE shall obtain and maintain throughout the Term of this Lease, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this lease. Notwithstanding any provision of this lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Airport Division a current certificate of insurance and all relevant endorsements for (and subject to CITY's written approval of same):

- a. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability Insurance ("Auto"), if and when LESSEE uses vehicles on the premises and/or in connection with

LESSEE's use of the premises, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.

- c. Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees, if any, who work on the premises and/or in connection with LESSEE's use of the premises, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

7.2.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each CGL and Auto policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the premises.

7.2.2 Primary & Non-Contributory. Each CGL and Auto policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.

7.2.3 Severability of Interest. Each CGL and Auto policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.2.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may

accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- 7.2.5 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.
- 7.2.6 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. The policies shall be kept in force for the duration of the Term. 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. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 7.2.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time 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 the Allowed Uses.
- 7.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the premises or otherwise related to the allowed uses. 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.
- 7.2.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Lease Use or 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 agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within twenty-four (24) hours of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days of the occurrence of the damage, 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 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 of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.

8.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done; in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

8.3 Maintenance.

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

8.4 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the Mayor, or his designee. 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 Mayor, or his designee, 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.

8.5 Utilities.

Upon prior written approval by CITY in each instance, 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.

8.6 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.

8.7 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.

8.8 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.

8.9 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 sixty (60) 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.

8.10 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.

8.11 Hazardous/Toxic Waste.

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. For purposes of this lease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- b. Hazardous Substance. For purposes of this lease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.
- d. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the premises immediately upon or prior to the expiration or earlier termination of this lease. CITY reserves the right to conduct

inspections of the premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- e. 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, maintenance or restoration of the premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the premises, CITY shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering

Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced with the noticed time period, CITY may cause the assessment to be performed. 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, from 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, or require future restricted re-use of the premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in 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, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

8.12 Asbestos Disclosure.

CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

SECTION 9: GENERAL PROVISIONS

9.1 Notices.

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

CITY:
Airports Deputy Director
Montgomery Field Terminal Building
3750 John J Montgomery Dr

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

9.2 Compliance with Law.

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

9.3 CITY Approval.

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

9.4 Nondiscrimination.

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

9.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will 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 herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of 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 agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY's Equal Opportunity Contracting Program staff.

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

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

9.6 Equal Benefits.

LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require LESSEE's of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this lease. LESSEE's failure to maintain equal benefits shall be a default of this lease.

9.7 Survival.

Any obligation which accrues under this lease prior to its expiration or termination shall survive such expiration or termination.

9.8 Joint and Several Liability.

If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.

9.9 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.

9.10 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.

9.11 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. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.

9.12 CITY Employee Participation Policy.

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

9.13 Drug-free Workplace.

LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the leasehold and specifying

the actions that will be taken against employees for violations of the prohibition.

- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling rehabilitation, and employees assistance programs
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

9.14 Disabled Access Compliance.

LESSEE shall, as applicable to the premises and LESSEE's possession, use and occupancy thereof, comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 (ADA); and all other applicable local, state and federal laws and regulations enacted, or hereafter enacted, protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, any improvements made to the premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the

premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

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

9.15 Accessibility Assessment.

In accordance with California Civil Code Section 1938, CITY hereby states that the premises has not been inspected by a Certified Access Specialist (CAsp.).

9.16 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

9.17 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.

SECTION 10: AIRPORTS PROVISIONS - IF, AND AS, APPLICABLE TO LESSEE

10.1 FAA REQUIREMENTS.

LESSEE and its officers, employees, contractors, agents, sublessees, and all others operating through LESSEE shall conform to the following FAA covenants and reservations of rights.

10.2 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 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 Montgomery Field Airport ("AIRPORT") in regard to their aviation and air navigation authority.

10.3 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 and the Airport. 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.

10.4 LESSEE's Noninterference with Aircraft.

LESSEE and LESSEE's successors, assigns agree not to in any manner 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, AIRPORT reserves the right to abate or eliminate the interference at the expense of LESSEE.

10.5 Lease Subordinate to AIRPORT/United States Agreements.

This lease shall be subordinate to the terms of any existing or future agreements between AIRPORT and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the Airport.

10.6 Height Limitation.

LESSEE and the LESSEE'S successors and assigns agree not to erect or permit any structure unless it complies with all FAA and ALUCP height limitations. If this covenant is breached in any way, AIRPORT reserves the right to remove the structure or object at the expense of the LESSEE.

10.7 Right of Flight Easement.

AIRPORT 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.

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 right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of Montgomery Field Airport. During any war or national emergency, AIRPORT shall have the right to lease, or allow the use of, any part of the Airport, including its landing areas, to the United States Government. In this event, any provisions of this lease which are inconsistent with the provisions of the lease to the Government shall be suspended. AIRPORT shall not be liable for any loss or damages alleged by the lease as a result of this action. However,

nothing in this lease shall prevent the LESSEE from pursuing any rights it may have for reimbursement from the United States Government.

10.9 Airport Development.

AIRPORT reserves the right to further develop, change or improve the Airport, including its routes and landing areas, as AIRPORT sees fit, without the LESSEE'S interference or hindrance and regardless of the LESSEE'S views and desires. AIRPORT shall have the right to perform any and all such actions referred to in this Section h - - including the right to shut parts or all of the Airport down - - at no liability to AIRPORT, regardless of any damages or losses LESSEE or any of its sublessees may suffer from said actions.

10.10 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).

10.11 Landing Area Maintenance.

AIRPORT reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities at Montgomery Field Airport. AIRPORT also has the right to direct and control all LESSEE activities affecting the maintenance and repair of the Airport land area and all other public facilities.

10.12 FAA Nondiscrimination Covenant.

LESSEE and LESSEE's representatives, successors, and assigns agree, as part of the consideration for this lease that:

- a. 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.
- b. 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.
- c. LESSEE shall conduct all activities by the agreement 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.

In the event of the breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Lease and to reenter and repossess said Premises and facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

10.13 Equal Opportunity.

LESSEE, LESSEE's successors, assigns agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

10.14 AIRPORT to Mitigate Impacts of Subordination.

If subordination agreements between AIRPORT and United States of America result in LESSEE's inability to operate on the Premises, or if the Uses permitted under this lease are materially affected during a period of subordination, AIRPORT agrees to make a reasonable rental reduction or adjustment, as determined by AIRPORT. LESSEE agrees that any damages claimed during this subordination period will be limited to this rental relief.

10.15 AIRPORT to Mitigate Impacts of Subordination by Termination or Extension.

If subordination agreements between AIRPORT and United States of America result in the LESSEE's inability to conduct activities contemplated by this lease on the Premises or if the LESSEE's activities are materially affected during a period of subordination: (1) AIRPORT agrees to make a reasonable time extension or adjustment, as determined by AIRPORT; or (2) upon written request from the LESSEE, AIRPORT will terminate this lease. The LESSEE agrees that any damages claimed during this subordination period will be limited to this time extension/adjustment relief.

10.16 Employee Conduct.

The LESSEE shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Premises and Airport, if that employee, contractor, agent, invitee or guest is on Airport property during any period of employment or in connection with the construction and development of the Improvements.

10.17 Subordination to Montgomery Field Quitclaim Deed.

LESSEE agrees that this lease is subordinate to the provisions of the Montgomery Field Quitclaim Deed to AIRPORT.

10.18 Aircraft Parking.

LESSEE shall require that all aircraft under its control be parked only on the Premises, accept as otherwise provided by the direction of the Airport Director, or his/her designee. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE'S control, be allowed to obstruct any designated taxiways.

10.19 Minority Business Policy.

LESSEE agrees that it and its contractors will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. The LESSEE and the 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.

10.20 Right of Flight.

There is hereby reserved to AIRPORT, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of Flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or land at, taking off from or operation on the Airport.

10.21 No Interference with Aircraft.

Lessee, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the even the aforesaid covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference and/or hazard at the expense of Lessee.

10.22 Provisions to be Included in All Pertinent Documents.

Lessee agrees that it shall insert all of the FAA Requirements provisions set forth in this Section 16 in all subleases, contracts or agreement by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

This lease constitutes the entire agreement between the parties and supersedes any and all prior understandings between the parties. Any modification, alteration, or amendment of this lease

shall be in writing and signed by all the parties hereto.

IN WITNESS WHEREOF, this lease is executed by CITY, acting by and through its Mayor, and by LESSEE, acting by and through its lawfully authorized representative.

THE CITY OF SAN DIEGO

Date 1/15/16

By [Signature]
Cybele Thompson
Director, Real Estate Assets Department

AIR TOURS OF SAN DIEGO, LLC

Date 11/23/15

By [Signature]
Travis N. Daniels

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Date: 12/28/15

By: [Signature]
Name: Megan Thompson
Title: Senior Planner

Approved as to form this 25th day
of January, 2016.

JAN I. GOLDSMITH, City Attorney

By [Signature]
Name: Debra J. Bevler
Title: Deputy City Attorney

Exhibit A

Leased Premises: Suite "D"

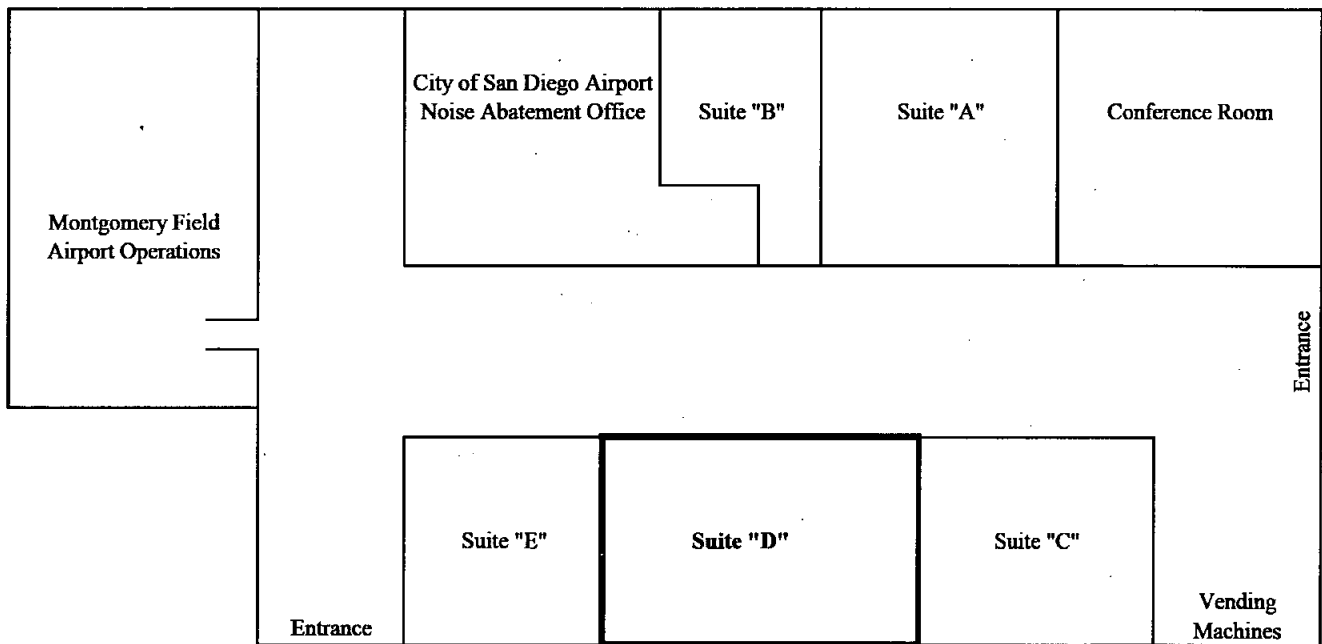


EXHIBIT B

RULES AND REGULATIONS

The sidewalks, entrances, halls, corridors and stairways of the Terminal Building ("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 judgment, 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 therefore. If all keys are not returned to CITY at the office of the Building Manager upon lease expiration, then the cost to replace the keys will be deducted from the Security Deposit.
3. 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 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 premise 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 judgment 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 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 boot blacking 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.